

54
No. 2906

2905

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE NINTH CIRCUIT

CHARLES H. RUDDOCK and TIMOTHY H.
McCARTHY, Plaintiffs,

Appellants

vs.

CLALLAM COUNTY, a Municipal Corporation, and
CLIFFORD L. BABCOCK, Treasurer, De-
fendants,

Appellees

RECORD ON APPEAL

ON APPEAL FROM THE UNITED STATES DIS-
TRICT COURT FOR THE WESTERN
DISTRICT OF WASHINGTON, NORTHERN
DIVISION.

Filed

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No. 37

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASH-
INGTON, NORTHERN DIVISION

CHARLES H. RUDDOCK and
TIMOTHY H. McCARTHY,

Plaintiffs and Appellants,

vs.

CLALLAM COUNTY, a municipal corporation, and
Clifford L. Babcock, Treasurer,

Defendants and Appellees.

IN EQUITY—NO. 37

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STATEMENT

Time of commencement of suit, May 29, 1914.

Names of parties to suit: Charles H. Ruddock and Timothy H. McCarthy, Plaintiffs and Appellants; Clallam County, a municipal corporation, and Clifford L. Babcock, Treasurer, Defendants and Appellees.

Dates of filing respective pleadings:

Plaintiffs' bill of complaint filed May 29, 1914.

Defendants' motion to dismiss plaintiffs' bill of complaint filed June 18, 1914.

Memorandum decision denying motion to dismiss, filed October 26, 1914.

Order denying motion to dismiss, filed October 30, 1914.

Defendants' amended answer to amended complaint, filed January 18, 1915.

Stipulation of parties with reference to complaint, amended answer and second amended answer, filed November 6, 1916.

On September 1, 1915, before the Hon. E. E. Cushman, Judge, this cause, in conjunction with Equity Cause No. 36, entitled Clallam Lumber Company, a corporation, Plaintiff, vs. Clallam County, a municipal corporation, and Clifford L. Babcock, Treasurer, Defendants; Equity Cause No. 56, entitled Clallam Lumber Company, Plaintiff, vs. Clallam County, a municipal corporation, and Herbert H. Wood, Treasurer, Defendants, and Equity Cause No. 57, Charles H. Ruddock and Timothy H. McCarthy, Plaintiffs, vs. Clallam County, a municipal corporation, and Herbert H. Wood, Treasurer, Defendants, the same being consolidated for trial, were tried upon the testimony of witnesses produced before the court, and upon exhibits offered in evidence by the respective parties, which have been returned and filed herein, and upon the depo-

sitions taken under stipulation of the parties and exhibits annexed thereto.

Counsel for the respective parties appeared and argued said cause in open court and thereafter submitted briefs to said court.

Thereafter, on January 22, 1916, the Judge before whom said causes were tried and heard made and filed his memorandum decision.

Decree was made and entered and filed in said cause on February 3, 1916.

Plaintiffs made and filed petition for rehearing March 3, 1916.

Argument had on petition to rehear before Hon. E. E. Cushman, Judge, and taken under advisement by him April 18, 1916.

Memorandum decision on petition to rehear rendered and filed by Hon. E. E. Cushman, Judge, May 11, 1916.

Final order denying petition for rehearing made and filed May 15, 1916.

Journal entry of said court adjourning the November term and opening the May term of court May 2, 1916.

Assignment of errors, petition for appeal, allowance of appeal, bond on appeal with approval thereof, filed October 27, 1916.

Citation on appeal issued, served and filed October 27, 1916.

Statement of Facts certified by Judge. Filed Oct. 27, 1916.

Order of Court, E. E. Cushman, Judge, enlarging time to docket case on Appeal and return of citation made and entered November 2, 1916.

Order of Judge of U. S. Circuit Court of Appeals, Ninth Circuit, on stipulation of parties that this cause be heard on Statement of Facts printed in Cause Clallam Lumber Co. vs. Clallam County, on appeal to this same term, made Dec. 12, 1916.

NO. 37

BILL OF COMPLAINT

To the Judge of the District Court of the United States,
for the Western District of Washington, Northern
Division, sitting in Equity:

The plaintiffs, Charles H. Ruddock and Timothy H. McCarthy, bring this their bill of complaint against Clallam County, a municipal corporation, and Clifford L. Babcock, treasurer of said county, and, humbly complaining, respectfully show unto your honor as follows:

I.

The plaintiff, Charles H. Ruddock, is a resident, a citizen and an inhabitant of the City of New York, State of New York, and Timothy H. McCarthy is a citizen, a resident and an inhabitant of the City of New Orleans, Louisiana.

II.

That at all the times herein mentioned, the defendant County of Clallam, was and now is a county of the state of Washington, situate in the Northern Division of the Western District thereof, and as such a municipal corporation under the constitution and laws of said state and a citizen of the state of Washington.

III.

That at all the times herein mentioned the defendant Clifford L. Babcock was and he still is the duly elected, qualified and acting treasurer of said county of Clallam, and a citizen of said state of Washington, and a resident and inhabitant of Clallam County, in the Northern Division of the Western District thereof.

IV.

The matter in controversy in this suit exceeds, exclusive of interest and costs, the sum or value of Three Thousand Dollars (\$3000.00), and is, to-wit: approximately the sum of Nine Thousand Dollars (\$9000) and over.

V.

The plaintiffs are the owners of certain timber lands situate in said Clallam County, a list of which,

containing the correct description thereof, is hereto attached and marked Exhibit "A" and made a part hereof. The said lands contain in the aggregate 7941.06 acres of land according to the government survey, more or less. These plaintiffs have been the owners of said lands for four years, or thereabouts, last past, and more. The said lands constitute substantially a solid body lying in the interior of Clallam County along the valleys of the Sol Duc and Calawa Rivers.

VI.

For the purpose of assessment for taxation and as a basis thereof, the assessing officers, of Clallam County have from time to time, during the last five or six years, caused timber lands in said county to be cruised, and the cruises and estimates thus made to be adopted by the county. Most of the timber lands in the county owned by private parties, as distinguished from the Government lands, have now been cruised, and all of the lands owned by these plaintiffs have been so cruised, and so far as respects timber lands within the county, upon which cruises have thus been made, it is claimed by the assessing officers that the same have been assessed upon the basis of the cruises thus obtained. The assessments made by the assessing officers of the county have been made, however, according to certain zones or districts which the assessing officers have arbitrarily, unreasonably and unlawfully laid off and determined without reference to and in disregard of the true or fair value in money of timber on the lands within such zones or districts respectively.

VII.

One of these zones thus arbitrarily laid out abuts immediately upon the Straits of Fuca and extends east and west along the Straits for a distance of approximately sixty-five miles, and extends back from the Straits into the interior distances varying approximately from three to eight miles. Within this zone are included those timber lands which, of all timber lands within the county, are of the greatest value, not merely because the timber thereon is of excellent quality, but particularly because of the location thereof, the same

being situate immediately upon tide-water or adjacent thereto, and thus rendered immediately accessible to the markets of the world. Within this zone the timber is valued for the year 1913, by the assessing officers of Clallam County, as follows: Fir, spruce and cedar at 80c per thousand feet; hemlock at 40c per thousand feet. In this and all other zones, in addition to the value placed by the assessing officers on the timber, there was for the year 1913 placed upon the lands themselves a value of \$1.00 per acre, and the same, in the case of these plaintiffs' lands, was done arbitrarily, unreasonably and unlawfully and without any reference to the actual value thereof. Many of the lands owned by the plaintiffs are of no value whatsoever independent of the timber standing or being thereon.

VIII.

Another zone thus arbitrarily, unreasonably and unlawfully set off by the assessing officers lies in the Western part of Clallam County. No part thereof lies nearer to the Straights than approximately four to six miles, and no lands within this zone owned by the plaintiffs lie nearer to the Straits than approximately nine miles and the great body of the lands owned by these plaintiffs within this zone, lie much more distant therefrom. Said zone or district is irregular in form and extends southerly until it reaches the line of Jefferson County, a distance of approximately thirty miles from the Straits of Fuca. There are no harbors upon the Pacific Ocean within the County of Clallam or Jefferson at or through which the timber on the lands of the plaintiffs might or could be brought to market. Within the zone or district described in this paragraph, there is a large acreage of land and upon the timber lands within this zone the assessing officers of Clallam County put for the year 1913, for the purpose of taxation, the following values, to-wit: Upon fir, spruce and cedar timber, a valuation of 70c per thousand feet; and upon hemlock, a valuation of 35c per thousand feet. In this zone the plaintiffs own lands approximately 7,941 $\frac{6}{10}$ acres in extent, and the timber upon

the same according to the cruise made by the County of Clallam, amounts in the aggregate to approximately 1,230,041 $\frac{1}{4}$ M feet of all sorts, as more fully set forth in Schedule "B" hereto attached and made a part hereof. The value of the lands of the plaintiffs within this zone as fixed and determined by the assessing officers for Clallam County for the year 1913, for the purposes of taxation is \$479,990.00. All the lands owned by these plaintiffs within this zone are separated from the Straits of Fuca by a range of mountains.

IX.

It has been the practice and custom throughout the state of Washington for four years or more last past, for the assessing officers and boards of equalization to assess and equalize property for the purposes of taxation, at less than its actual and full value, the assessors and taxing officers of the various counties assuming some arbitrary standard which has usually been from 35 to 50% of the actual value of the property taxed. This has been known to and acquiesced in by the State Board of Equalization in equalizing such taxes. The assessor of the County of Clallam announces and pretends that for the year 1913 he assessed taxable property within the County of Clallam at and upon the basis of fifty-three per cent. of the true and fair value thereof in money; and the members of the County Board of Equalization announced and pretend that they equalized and approved the assessments upon the taxable property within said county for such year at and upon the same basis. But these plaintiffs aver that such claims and pretenses are untrue in fact, and that the interior timber lands in said county, and in particular the lands owned by these plaintiffs, were and are valued for the purposes of taxation in the year 1913, at sums greatly in excess of 53% of the true and fair valuation thereof in money; that the other properties, real and personal, in said county, were valued at sums much less than 53% of the true and fair value thereof in money; and that these plaintiffs were grossly and intentionally discriminated against by the assessing officers of Clallam

County in the matter of assessment and taxation upon their lands for the year 1913.

X

The timber upon the lands of the plaintiffs as shown by the cruise thus made by the County of Clallam, amounts in the aggregate to approximately 1,230,041 $\frac{1}{4}$ M feet of all sorts, as more fully shown by Schedule "C" attached hereto and made a part hereof. The assessments on the lands of plaintiffs for the year 1913 were made upon the basis of said cruise, and these plaintiffs aver that the timber upon their lands was greatly over-valued by the assessing officers of Clallam County in the valuations put thereon by them for the purposes of taxation in the year 1913. The valuations thus placed by the assessing officers of Clallam County upon the lands of these plaintiffs described in Exhibit "A" hereto attached, for the purposes of taxation, for the year 1913, amount in the aggregate to \$479,990.00. These plaintiffs aver that the true and fair value in money of said lands does not exceed the sum of \$550,000. Dollars, and did not exceed that sum in the year 1913, when said assessment was made. Such assessment was therefore made upon the basis of approximately eighty-seven per cent. of the true and fair value thereof in money. No property in said Clallam County, except the timber lands owned by the plaintiffs, and perhaps certain other timber lands similarly situated in the interior of said county, were assessed in said year 1913 at so great a proportion of the true and fair value thereof in money. Such assessment upon the lands of the plaintiffs at so large a percentage of the true and fair value thereof in money, was not accidental or unintentional on the part of said assessing officers of Clallam County, but was intentional and willful, and, as these plaintiffs aver, was in pursuance of a concerted effort and corrupt and unlawful combination and conspiracy between the assessor of Clallam County and the other members of the County Board of Equalization of said County of Clallam. Some of the facts relating to the nature of said combination and conspiracy and to the unlawful assessment so made are hereinafter set forth.

XI.

The timber lands in the County of Clallam are situate for the most part in the westerly end thereof, the timbered portion of the county owned by private parties and subject to assessment being situate almost entirely within that portion of the county lying west of Range eight and extending from thence practically to the Pacific Ocean. This territory is sparsely settled, containing only a few inhabitants at the most, and those settled for the greater part at Forks and Quillayute Prairies (so-called). Comparatively few of the voters of the county, therefore, reside in the west end district. The county seat of the county is the City of Port Angeles, in the middle district, said city containing a population approximately 5000 in number. In the east district (so-called) are prosperous farming communities, the same being well settled, particularly in the vicinity of Sequim and Dungeness, the population in said east district being approximately 1500 in number. The voting power of the county is, therefore, in the east and middle Commissioner's districts, and particularly in that easterly portion of the county extending from and including Port Angeles to the East County line, the voters in the west district being so few that they have little voice in the county affairs. The lands in the west end of the county, being almost entirely timbered lands, except at the small prairies of Forks and Quillayute, are incapable at the present time of supporting any considerable population. They are mostly owned by non-residents of said county.

XII.

The assessing officers of the county of Clallam (with the exception of one county commissioner from the west district) are elected by the votes of those resident in the Middle and East district, because of the preponderance of votes in those districts, and for the purpose, as these plaintiffs aver, of ingratiating themselves with their constituents and serving their own individual and selfish ends, the said assessing officers of Clallam County have wrongfully, unlawfully, and corruptly combined and concerted together with the

intent and purpose to increase the assessments upon the timber lands in the west end of the county beyond their proportion of the true and fair value of the property within the county, and to lower and depreciate the assessments upon the property in the City of Port Angeles, and contiguous thereto or in that vicinity, the farming lands in the east end of the county and other properties within the county, and especially in the middle and east districts thereof, and to assess the same upon a basis and at valuations far below their proportion of the true and fair value of the property, subject to assessment in Clallam County. In pursuance of this combination and conspiracy it has been the custom of the assessor of the County of Clallam to consult and advise with the other members of the County Board of Equalization, or with all those resident in the middle and east districts, in making his assessment rolls, and that custom, as these plaintiffs are informed and believe, was followed by the assessor in making his rolls for 1912 and 1913. The assessment roll, as prepared by the assessor, does not, therefore, and in each of the years above mentioned did not, represent the judgment of the assessor, but was and is the result of the combination and conspiracy with other members of said County Board of Equalization, and this roll, thus prepared by the assessing officer, is approved as a matter of course, in all substantial respects, and particularly as relates to assessments of timber lands, by the County Board of Equalization when it meets to review the same. As a result, no fair hearing as contemplated by statute, is possible to be had on appeal to said Board. And these plaintiffs aver that this practice has been followed in Clallam County for several years continuously last past, and that, when these plaintiffs appealed to said Board in the year 1910, their attorney addressed said board at the opening of its session, and was told in substance by one of the members of said Board, speaking in its behalf, that it was needless to introduce any evidence of values of timber lands for no such evidence would change the views of said Board.

XIII.

In the years 1912 and 1913, and prior thereto, gross discriminations were practiced by the assessing officers of Clallam County against your plaintiffs and other owners of timber lands in the interior of the county and in favor of other owners of property subject to taxation in Clallam County. These discriminations were aimed in particular at these plaintiffs and other owners of interior timber, for the reason that they own large bodies of lands in said county, but control no votes and exercise no political influence therein, and the size of their holdings has constituted an inducement to said assessing officers to place a large and greatly disproportionate share of the taxes levied within the county upon these plaintiffs and such other owners of interior timber, and thereby relieve other property owners within the county of some portion of that burden of taxation which, under the Constitution and laws of Washington, equitably and lawfully falls upon them. These discriminations thus practiced against these plaintiffs have been and are with the intent and purpose to favor, at the expense of the plaintiffs and other owners of interior timber lands, all owners of property at Port Angeles and in the vicinity thereof, all owners of property in the East district (so-called), all owners of personal property throughout the county and likewise the owners of timber lands immediately upon the Straits.

XIV.

The plaintiffs have caused diligent and careful examination to be made of the assessment rolls of Clallam County for the years 1912 and 1913, and a like examination of property values within the county, and as a result thereof now find that the lands and other properties situate at Port Angeles and subject to taxation, are valued upon said assessment rolls as equalized for such years at not to exceed 10 to 20 per cent. of their true value in money. The County Board of Equalization of Clallam County is, and for the years 1912 and 1913 was composed of five members of whom three are the county commissioners and the other two

are the county treasurer and the county assessor respectively. Of said members of the Board one County Commissioner, representing the middle district, resides at Port Angeles, and is Chairman of the Board. The County Treasurer and County Assessor also reside at Port Angeles. A fourth member resides in the east district, and the remaining member in the west district. Three out of the five members of the County Board of Equalization are therefore residents of Port Angeles, and the major part of the population of the county is also found at Port Angeles. These members of the Board resident at Port Angeles are themselves owners of property at Port Angeles. In order to favor themselves and their constituents at Port Angeles aforesaid, the three members resident at Port Angeles have combined and conspired with the East End Commissioner to put low valuations upon the property at Port Angeles and vicinity, and high and unequal valuations upon the timber lands situate in the west end of the county and in particular upon the timber lands of these plaintiffs and other owners of timber lands in the interior of Clallam County.

XV.

As the result of diligent and careful examination made by these plaintiffs of the assessment rolls of Clallam County for the years 1912 and 1913, and a like examination of the property values within the county, these plaintiffs find that the farming lands and other properties situate in the east end subject to taxation are valued upon said tax rolls as equalized for such years, at not to exceed 25 to 30% of their true and fair value in money.

XVI.

As the result of diligent and careful examination made by plaintiffs of the assessment roll of Clallam County for the years 1912 and 1913, and a like examination of the property of others within the county, plaintiffs find that the personal property within said county consisting of stocks and goods, wares and merchandise at Port Angeles, and other personal properties situate at Port Angeles and elsewhere within the coun-

ty, are valued by the assessing officers of Clallam County for the year 1913 at not to exceed 10% to 15% of their true and fair value in money.

XVII.

The lands owned by the plaintiffs lie, as hereinbefore stated, in the valleys of the Sol Duc and Calawa Rivers and upon the benches and ridges between the same or adjacent thereto. These lands are at present wholly destitute of facilities for transportation and it is impossible to bring the timber thereon into the market. In order to bring said timber to market it is necessary that facilities be provided for transportation to Gray's Harbor on the south or to the Straits of Fuca on the north. Gray's Harbor is far distant, no railroad from that direction extending farther north than Moclips, a distance of more than sixty miles from the lands of your plaintiffs. Few of the lands of the plaintiffs are less than twelve miles from the Straits and most of them lie a still greater distance therefrom, and all of said lands of the plaintiffs are cut off from the Straits by the range of mountains running east and west through the County of Clallam. It is therefore impossible to bring the timber from plaintiffs land to market except by transporting the logs or lumber cut therefrom across this range of mountains. This cannot be accomplished except by the construction of a railroad at great expense. This expense is beyond any present means at the command of the plaintiffs and is likewise an expense which, in the present conditions of the lumber market, or in any conditions of the lumber market which have at any time heretofore prevailed on the Pacific Coast, is prohibitive. This fact has a direct and important bearing on the present value of the plaintiffs land. Upon the Straits of Fuca, however, and immediately adjoining tide-water, there lie fine bodies of fir, spruce, cedar and hemlock timber, which can readily be logged to the Straits at the present time. Extensive logging operations have for many years been carried on and are now being carried on in this portion of Clallam County lying immediately upon the Straits. This Straits timber (so-called) is

in the zone or district arbitrarily, unreasonably and unlawfully laid off by the assessing officers as recited in paragraph VII, in which zone or district the timber is valued for the year 1913 by the assessing officers of Clallam County as follows: Fir, spruce and cedar at 80c per thousand feet, and hemlock at 40c per thousand feet; whereas upon the lands of these plaintiffs which lie within the interior of the county and separated from tide water by a range of mountains, the timber is assessed at slightly lower figures, being for the most part 70c or 60c for fir, spruce and cedar, and 35c or 30c for hemlock. These plaintiffs say that the true and fair value in money of said timber so lying upon tide-water or adjacent thereto, is at least twice the true and fair value in money of the timber on these plaintiffs lands.

XVIII.

The City of Port Angeles, where the majority of the voters of Clallam County reside, is situate at tide-water and upon a harbor which it is the wish of the inhabitants of said city may become the seat of a considerable commerce. To this end there is an ardent desire on the part of the inhabitants of Port Angeles that the timber owners of Clallam County build mills at Port Angeles, construct railroads into the interior of the County, transport logs from the interior of the County to Port Angeles, and saw the same into lumber at that city, thereby adding to the growth and development of Port Angeles as respects both industries and population. Various of the inhabitants of Port Angeles, including the assessor, have complained to these plaintiffs that, because they failed to build saw-mills and railroads or cause the same to be done, it had pursued and was pursuing a policy hostile to the true interests of the county and especially of Port Angeles, and that such interests would be promoted only by building saw-mills and railroads; and these plaintiffs aver that, as part of the combination and conspiracy aforesaid, it is the purpose of the assessing officers of Clallam County, representing, as they believe, the sentiment among the voters at Port Angeles, to assess the tim-

ber lands in the West end of Clallam County at exorbitant sums, as a means of compelling the erection of mills at Port Angeles, the construction of railroads into the interior of the county, and the commencement and carrying on of logging and lumbering operations within the county. In particular it has been and is a part of said combination and conspiracy to compel the plaintiffs, as some of the large timber land owners of Clallam County, to erect such mills and construct such railroad and commence and conduct lumbering operations; and through influential citizens of Port Angeles, these plaintiffs have been assured that, if they would begin to operate their timber and employ a considerable number of men, they might rely that they would thenceforth be fairly and equitably treated as respects taxation. The plaintiffs aver that the majority of the members of the Board of Equalization are themselves the owners of real property at Port Angeles and are, therefore, personally interested in its rapid growth and development, and desire, for their individual aggrandizement, to compel the plaintiffs to erect mills and construct railroads and commence and conduct lumbering operations, despite the fact that no such operations can be conducted with profit in the market conditions now prevailing.

XIX.

The plaintiffs aver that the unequal, discriminating and unlawful assessments which are herein complained of are not accidental or unintentional on the part of said assessing officers of Clallam County, but that the same are the direct and immediate result of a corrupt and unlawful intent on the part of the County Assessor for the County of Clallam, and the members of the county Board of Equalization of said County, or the majority of said members, to discriminate against the timber land owners in the West end of said County, and particularly against the plaintiffs in the matter of taxation, and in favor of all owners of property in the middle and East districts of the county, and unjustly and illegally to overvalue the property of the plaintiffs for purposes of taxation and to under-

value, for the purposes of taxation, other lands and properties within said County of Clallam, including all property situate in Port Angeles or the vicinity thereof, all farming properties in the East end of said county of Clallam, and all other properties, real or personal, in the middle and East districts, as well also as certain other timber lands in said county situate within the zone lying immediately upon the Straits, as set forth in paragraph VII of this bill.

XX.

The plaintiffs aver that by Section 9112 of Volume 3 of Remington & Ballinger's Annotated Codes and Statutes of Washington, it is provided that all property shall be assessed at not to exceed fifty per cent. of its true and fair value in money; that the true and fair value in money of the lands owned by your plaintiffs and particularly described in Exhibit "A" hereto attached, with the timber standing thereon, does not exceed the sum of \$550,000.00 and did not exceed that sum when the assessments of 1912 and 1913 were made; that under said statute of the State of Washington any assessment of said lands for purposes of taxation at a sum greater than \$275,000.00 is unjust, illegal and void; that the true and fair value in money of the lands so owned by the plaintiffs is known to the assessor of said county of Clallam, as well as to the members of the County Board of Equalization thereof, and was so known at the time of the making of assessment and at the time of the approval thereof by said Board of Equalization; but that, wholly disregarding the duty thus placed upon them by the law to assess said lands at no greater sum than one-half their true and fair value in money, the said assessor and the said Board of Equalization fraudulently and unlawfully caused the same to be assessed at a sum exceeding, by at least \$204,990, the 50% of the true and fair value in money of said lands, contrary to the provisions of the statute above specified, and that such over-assessment was made and approved by said assessing officers with the fraudulent and corrupt intent of placing upon your orator the burden of an exces-

sive and unjust proportion of the taxes, levied and collected within said County of Clallam for said year. The taxes levied for the year 1913 by the officers of Clallam County upon the lands owned by your orator, and described in Exhibit "A", amount, in the aggregate, to the sum of \$15,809.00 as shown by the tax roll of said county for that year, whereas had such taxes been levied upon the true and fair value in money of the aforesaid lands, the same would not have exceeded the sum of \$9,250.00; and your plaintiffs aver that by the fraudulent and unlawful practices of the assessing officers of Clallam County, of which complaint is herein made, there were and are unlawfully, unjustly and fraudulently imposed upon its lands described in Exhibit "A" taxes for the year 1913 to the amount of at least sixty-five hundred and fifty-nine dollars, in excess of all taxes which might or could equitably or unlawfully be imposed thereon.

XXI.

The overvaluation of the lands of the plaintiffs and other owners of interior timber, and the undervaluation of other property in said county, of which complaint is herein made, are in pursuance of a definite, settled policy, design and plan systematically adopted by said assessing officers and practiced for several years last past. The plaintiffs aver that the assessment of the lands of the plaintiffs and other owners of timber lands in the interior of Clallam County at sums which are proportionately much higher than the assessments imposed upon the other properties, real and personal, in said county, is and results in an actual fraud upon the plaintiffs, and the said plan so resulting in such fraud upon the plaintiffs was and is arbitrarily and systematically adopted and carried out by the assessor and members of the County Board of Equalization and by the defendants herein.

XXII.

The assessments upon the lands of the plaintiffs were made by the Assessor of said County for the year 1912 at the high, excessive, unlawful and illegal rates herein specified, and upon the unlawful and fraud-

ulent basis herein mentioned. Thereafter the County Board of Equalization met ostensibly to consider and review the assessment roll. But such review was ostensible, specious and fraudulent in character, the members of the Board having already combined and conspired with said Assessor to make the assessments upon the basis and at the amounts hereinbefore mentioned. The plaintiffs, through their managing officer and attorneys, appeared before the County Board of Equalization when the same was sitting at its regular session in 1912, and protested against said excessive, unjust and unlawful assessments upon its lands. Such protest was both oral and in writing. The protests so made were arbitrarily disregarded and overruled by said Board, and the petition so filed by the plaintiffs to equalize its assessments and put the assessments on the property of the plaintiffs on the same basis as the assessments upon other property in said County, was arbitrarily denied.

XXIII.

The assessments upon the lands of the plaintiffs were made by the Assessor of said County for the year 1913, at the high, excessive, unlawful and illegal amounts and rates herein specified, and upon the unlawful and fraudulent basis herein mentioned. Thereafter the County Board of Equalization met ostensibly to consider and review the assessment roll, but such review was ostensible, specious and fraudulent in character, the members of the Board having already combined and conspired with said Assessor to make the assessments upon the basis and at the amounts hereinbefore mentioned. The plaintiffs, through their attorney, appeared before the County Board of Equalization when the same was sitting at its regular session in 1913 and protested against said excessive, unjust and unlawful assessments upon its lands.

The protests so made, both orally and in writing, were arbitrarily disregarded and overruled by said Board, and the petition of the plaintiffs to equalize their assessments and put the same on the same basis as

the assessments upon other properties in said County, was arbitrarily and unlawfully denied.

XXIV.

Thereafter the taxes were extended against the lands of the plaintiffs upon the tax rolls and books of said County, the same being so extended upon the basis of the high, excessive, unlawful and fraudulent assessments upon the lands of these plaintiffs of which complaint is herein made. Said tax rolls and books were delivered to the defendant Clifford L. Babcock, Treasurer of said County, and said Clifford L. Babcock, as such Treasurer, has demanded payment of said illegal, fraudulent and arbitrary taxes assessed and levied in manner as hereinbefore specified. The taxes so demanded by said Clifford L. Babcock, Treasurer of said County, amount, in the aggregate to the sum of \$158 09, and said Treasurer, unless restrained by the order of this Court, will sell the property of the plaintiffs to satisfy the taxes thus fraudulently and unlawfully assessed and levied.

XXV.

That upon the 28th day of May, 1914, the plaintiffs tendered and offered to pay to said Clifford L. Babcock, treasurer of Clallam County, and to said Clallam County, the defendants herein, the full and true sum of \$9,250.00 Dollars, lawful money of the United States, in payment of the taxes levied upon their lands in said Clallam County, for the year 1913; and the plaintiffs aver that the sum thus tendered is more than the taxes justly and equitably due from the plaintiffs to the defendants upon their lands aforesaid for such year, including all penalties, interest and costs, and more than the full amount which the plaintiffs would be required to pay if their property were assessed upon the same basis as all other property in Clallam County, or if said assessments were legal and equitable or equal and uniform with or compared to the assessments upon all other property within said county. The plaintiffs herewith bring into court the sum of money in this paragraph specified and tender and offer to pay, and do hereby pay the same, to and for the use and benefit

of the defendant County of Clallam, and the plaintiffs offer to pay and will pay any such other or further amounts as the court may find to be justly due from them or equitably owing by them to said County of Clallam. And the plaintiffs aver that the taxes upon their said lands for all years prior to 1913 have been paid and that the taxes for the year 1913 have been paid and discharged by the tender and payment herein specified.

XXVI.

The plaintiffs aver that by reason of the facts hereinbefore recited, the assessment of the plaintiff's lands for taxation for the year 1913 is arbitrary, unjust, illegal, and fraudulent, as compared with the assessment of all other property in said Clallam County, and that such unlawful and fraudulent assessment is prohibited by the Constitution of the State of Washington, and that the assessment so made is in particular, in violation of and contrary to Section 2, Article VII, of the Constitution of the State of Washington, in and by which it is provided that assessments and taxes shall be uniform and equal on all property in said state, according to its value in money, and that there shall be secured a just valuation for taxation of all property, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property, and that the assessment so made is also in violation of and contrary to Section 1 of Article VII of the Constitution of the State of Washington which declares that all property in the State, not exempt under the laws of the United States, or under said State Constitution, shall be taxed in proportion to its value. And the plaintiffs aver that in truth and in fact the taxes upon their lands, described in Exhibit "A", are not uniform and equal as compared with all other property in said County of Clallam.

XXVII.

The plaintiffs aver that if the assessment and levy of taxes for the year 1913 upon their lands in Clallam County, hereinbefore described, be not set aside, vacated and held for naught, the same will result in the

taking of their property without due process of law, and in denying to them the equal protection of the laws, contrary to the provisions of the XIVth Amendment to the Constitution of the United States, which provides that no state shall deprive any person of property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. And the plaintiffs pray the protection afforded by said XIVth Amendment to the Constitution of the United States, and aver that this suit arises under the Constitution and Laws of the United States, and that for this reason, as well as because of the diverse citizenship of the parties, this Court has jurisdiction thereof.

XXVIII.

The plaintiffs are remediless at and by the strict rules of the common law, and are relievable only in a court of equity, where matters of this sort are properly cognizable and relievable.

XXIX.

The plaintiffs therefore ask the aid of this Court in the premises, and pray:

(a) That the County of Clallam, a municipal corporation, and Clifford . Babcock, Treasurer of said County, answer this bill without oath, answer under oath of said defendants being hereby expressly waived.

(b) That this court decree that the assessments and taxes for the year 1913, imposed by the assessing and taxing officers of the County of Clallam upon the lands of the plaintiffs are unlawful, fraudulent and void; that the same are contrary to and in violation of the Constitution and Laws of the State of Washington and the provisions of the 14th Amendment to the Constitution of the United States.

(c) That this Court determine and decree what sums were or are justly owing by the plaintiffs for the taxes for the year 1913 upon their lands in Clallam County, described in Exhibit "A" hereto attached, and what assessments and taxes upon their lands are equal and uniform with or compared to the assessments and taxes upon all other property in said County.

(d) That it be determined and decreed that the sum of \$9,250.00 tendered by the plaintiffs to said defendants, is sufficient to pay all sums which were or are justly and equitably owing by the plaintiffs for the taxes for the year 1913 upon their lands in said County of Clallam, described in said Exhibit "A".

(e) That said defendants, and each of them, be permanently enjoined and restrained from attempting to collect for the taxes of the year 1913 any sum or sums whatever in addition to those already tendered, and from selling or attempting to sell the lands or property of the plaintiffs, or any part thereof, to satisfy said taxes so levied for the year 1913 upon their lands in Clallam County, and that the cloud upon the title of the plaintiffs to their said lands which exists because or by reason of such unjust, illegal and fraudulent taxes, so levied, be forthwith removed and cancelled.

(f) That said defendants, and each of them, be in like manner enjoined until the further order of this Court.

(g) That such other or further order or decree be made in the premises as the nature of the case may require, and as to the Court shall seem meet.

XXX.

May it please your Honors to grant unto the plaintiffs the writ of injunction to be issued out of and under the seal of this Court in due form of law, permanently enjoining and restraining said defendants, County of Clallam and Clifford L. Babcock, Treasurer of said County, and each of them, from attempting to collect for the taxes of the year 1913 any sum or sums whatsoever in addition to those already tendered by the plaintiffs, and from selling or attempting to sell the lands or property of the plaintiffs or any part thereof, to satisfy said taxes so levied for the year 1913 upon their lands in Clallam County; and that a writ of injunction be issued enjoining and restraining the defendants and each of them in like manner as herein prayed, until the further order of this Court.

XXXI.

May it please the Court, the premises being considered, to grant unto the plaintiffs the writ of subpoena to be issued out of and under the seal of this Court, directed to said County of Clallam, a municipal corporation, and Clifford L. Babcock, Treasurer of said County of Clallam, commanding them and each of them to appear before this Court at a date therein specified and answer this bill of complaint.

And the plaintiffs will ever pray, etc.

CHARLES H. RUDDOCK and
TIMOTHY H. McCARTHY,

Plaintiffs.

By Dan Earle.

PETERS & POWELL,
EARLE & STEINERT,

Attorneys for Plaintiffs.

United States of America, County of King, State of Washington—ss.

On this 29th day of May, 1914, before me, a Notary Public in and for the state of Washington, personally appeared Dan Earle, to me known to be the same person who subscribed the foregoing Bill of Complaint in complainant's behalf, who made oath and says that he subscribed the name of complainant to the foregoing bill of complaint; that he is properly authorized so to do; that he is the attorney of said complainants; that affiant has read the bill of complaint by him subscribed and knows the contents thereof, and that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to those matters he believes it to be true.

VOLNEY P. EVERS,

Notary Public in and for the State of Washington,
residing at Seattle.

EXHIBIT "A"

	Township 28 North, Range 14 West	
Section	1	Lot 2
	"	" 3
	"	" 4

	"	"	5
	"	"	6
	"	"	7
	"	"	8
	"	"	9
	"	"	11
	"	"	12
	"	"	13
	"	S $\frac{1}{2}$ of NE $\frac{1}{4}$	
	"	NW of SE	
	"	SW $\frac{1}{4}$ of SE $\frac{1}{4}$	
	"	S $\frac{1}{2}$ of SW $\frac{1}{4}$	
Section	2	Lot	5
	"	"	6
	"	"	7
	"	S $\frac{1}{2}$ of NE $\frac{1}{4}$	
	"	NW $\frac{1}{4}$ of SE $\frac{1}{4}$	
	"	SW $\frac{1}{4}$ of SE $\frac{1}{4}$	
	"	NE $\frac{1}{4}$ of SW $\frac{1}{4}$	
	"	SE $\frac{1}{4}$ of SW $\frac{1}{4}$	
Section	10	S $\frac{1}{2}$ of NW $\frac{1}{4}$	
	"	NE of SW $\frac{1}{4}$	
	11	Lot	1
	"	"	2
	"	"	4
	"	"	5
	"	"	6
	"	"	10
	"	"	11
	"	"	12
	"	"	13
	"	"	14
	"	N $\frac{1}{2}$ of NW $\frac{1}{4}$	
	"	SW $\frac{1}{4}$ of NW $\frac{1}{4}$	
Section	12	Lot	1
	"	"	2
	"	"	3
	"	"	4
	"	"	5
	"	N $\frac{1}{2}$ of NW $\frac{1}{4}$	
	"	NW $\frac{1}{4}$ of SE $\frac{1}{4}$	

	“	N $\frac{1}{2}$ of SW $\frac{1}{4}$
	“	SW $\frac{1}{4}$ of SW $\frac{1}{4}$
Section 13	Lot	1
	“	2
	“	3
	“	4
	“	5
	“	6
	“	7
	“	8
	“	9
	“	14
	“	NW $\frac{1}{4}$ of NW $\frac{1}{4}$
Section 13	SW $\frac{1}{4}$ of NW $\frac{1}{4}$	
	“	SW $\frac{1}{4}$ of SE $\frac{1}{4}$
Section 14	Lot	1
	“	3
	“	5
	“	6
	“	NE $\frac{1}{4}$
	“	NE $\frac{1}{4}$ of NW $\frac{1}{4}$
	“	SE $\frac{1}{4}$ of NW $\frac{1}{4}$
	“	N $\frac{1}{2}$ of SE $\frac{1}{4}$
Section 15	Lot	1
	“	10
	“	12
	“	13
	“	SE $\frac{1}{4}$ of SE $\frac{1}{4}$
23	Lot	1
	Township 28 North, Range 13 West	
Section 3	Lot	2
	“	5
	“	6
	“	SW $\frac{1}{4}$ of NW $\frac{1}{4}$
	“	NW $\frac{1}{4}$ of SW $\frac{1}{4}$ exc. 2 acres
Section 4	Lot	1
	“	5
	“	6
	“	N $\frac{1}{2}$ of SE $\frac{1}{4}$
Section 5	Lot	1, except right-of-way
	“	2, except right-of-way

	“	“	3
	“	“	4
	“	“	5
	“	“	6
	“	“	7
	“	S $\frac{1}{2}$ of NE $\frac{1}{4}$	
	“	S $\frac{1}{2}$ of NW $\frac{1}{4}$	
	“	NE $\frac{1}{4}$ of SW $\frac{1}{4}$	
Section	6	Lot	1
	“	“	2
	“	“	3
	“	“	4
	“	“	5
	“	“	6
	“	“	8
	“	“	9
	“	S $\frac{1}{2}$ of NE $\frac{1}{4}$	
Section	7	Lot	6
	“	“	10
Section	8	“	1
	“	“	2
Section	18	SW $\frac{1}{4}$ of NE $\frac{1}{4}$	
	“	SE $\frac{1}{4}$ of NW $\frac{1}{4}$	
Section	28	SE $\frac{1}{4}$ of SE $\frac{1}{4}$	
Section	33	NE $\frac{1}{4}$ of NE $\frac{1}{4}$	
	“	Lot	1
	“	“	5
		Township	29 North, Range 13 West
Section	19	SE $\frac{1}{4}$ of SE $\frac{1}{4}$	
Section	20	S $\frac{1}{2}$ of SE $\frac{1}{4}$	
Section	20	NW $\frac{1}{4}$ of SW $\frac{1}{4}$	
	“	SW of SW $\frac{1}{4}$	
	21	Lot	4
	“	NW $\frac{1}{4}$ of SW $\frac{1}{4}$, except right-of-way	
	“	SW $\frac{1}{4}$ of SW $\frac{1}{4}$, except right-of-way	
Section	22	SW $\frac{1}{4}$ of NE $\frac{1}{4}$, except right-of-way	
	“	NW $\frac{1}{4}$ of SE $\frac{1}{4}$	
	“	SW $\frac{1}{4}$ of SE $\frac{1}{4}$	
	“	NE $\frac{1}{4}$ of SW $\frac{1}{4}$	
	“	SE $\frac{1}{4}$ of SW $\frac{1}{4}$	
	“	Lot	3

- Section 27 NW $\frac{1}{4}$ of NE $\frac{1}{4}$
 " SW $\frac{1}{4}$ of NE $\frac{1}{4}$
 " NE $\frac{1}{4}$ of NW $\frac{1}{4}$
 " SE $\frac{1}{4}$ of NW $\frac{1}{4}$
 " SW $\frac{1}{4}$
- Section 28 Lot 6
 " NW $\frac{1}{4}$ of NW $\frac{1}{4}$, except right-of-way
 " SW $\frac{1}{4}$ of NW $\frac{1}{4}$, except right-of-way
 " S $\frac{1}{2}$ of SE $\frac{1}{4}$
- Section 29 NE $\frac{1}{4}$
 " NW $\frac{1}{4}$
 " NE $\frac{1}{4}$ of SE $\frac{1}{4}$, except right-of-way
 " NW $\frac{1}{4}$ of SE $\frac{1}{4}$
 " N $\frac{1}{2}$ of SW $\frac{1}{4}$
 " Lot 1, except right-of-way
 " " 2
 " " 3
 " " 4
 " " 7
 " " 8
 " " 9, except right-of-way
- Section 30 SE $\frac{1}{4}$ of NE $\frac{1}{4}$
 " N $\frac{1}{2}$ of SE $\frac{1}{4}$
 " Lot 6
 " " 7
 " " 8
 " " 9
- 31 N $\frac{1}{2}$ of NE $\frac{1}{4}$
 " SW $\frac{1}{4}$ of NE $\frac{1}{4}$
 " SE $\frac{1}{4}$
 " SE $\frac{1}{4}$ of SW $\frac{1}{4}$
 " Lot 4
 " " 5
 " " 6
 " " 7
 " " 9
- Section 32 " 1
 " " 2, except right-of-way
 " " 3
 " " 4
 " " 5

- “ NW¹/₄ of NE¹/₄, except right-of-way
- “ SE¹/₄ of NE¹/₄
- “ SW¹/₄ of NE¹/₄, except right-of-way
- “ NE¹/₄ of SE¹/₄
- “ NW¹/₄ of SE¹/₄, except right-of-way
- “ S¹/₂ of NW¹/₄
- “ SE¹/₄ of SE¹/₄
- “ SW¹/₄ of SE¹/₄, except right-of-way
- Section 33 NW¹/₄ of NE¹/₄
- “ S¹/₂ of NE¹/₄
- “ Lot 2
- “ SE¹/₄ of NW¹/₄
- “ SE¹/₄
- Section 34 NW¹/₄ of NE¹/₄
- “ SW¹/₄ of NE¹/₄
- “ NE¹/₄ of NW¹/₄
- “ SE¹/₄
- “ SW¹/₄
- 35 SW¹/₄

EXHIBIT “B”

Fir	742,325 ³ / ₄	M
Spruce	237,429	M
Cedar	10,402 ³ / ₄	M
White Fir	3,377 ¹ / ₂	M
Hemlock	235,826 ¹ / ₄	M
Larch	298	M
Pine	382	M

1,230,041¹/₄ M

POLES
108,927
TIES
200,934

Indorsed: Bill of Complaint. Filed May 29, 1914.
No. 37

DEFENDANTS' MOTION TO DISMISS PLAINTIFFS, BILL

Come now the defendants in the above entitled action, appearing by J E Cochran, County Attorney for Clallam County, Washington, J E Frost, C E Riddell and Edwin C Ewing, attorneys for the defendants, and

respectfully move the court for an order dismissing the bill of plaintiffs upon the grounds and for the reasons following:

I

Because the plaintiffs at all times mentioned in their said bill of complaint have had a plain, speedy and adequate remedy under the statutes of the State of Washington.

II

Because it fully appears in plaintiffs' bill of complaint that the matters and things therein alleged and complained of have long been acquiesced in and consented to by plaintiffs, and plaintiffs are in equity and good conscience denied from controverting their justice and legality.

III

Because the facts alleged in plaintiffs' said bill of complaint are not in violation of any constitutional or statutory provision nor of any rule or principle of justice or equity, but on the contrary are in compliance with both law and equity

IV

Because the matters and things alleged in plaintiffs' said bill of complaint are not sufficient to entitle them to the relief prayed for or to any relief whatsoever or to be heard or to maintain an action.

J. E. COCHRAN,
J. E. FROST, ..
C. F. RIDDELL,
EDWIN C EWING.

Indorsed: Motion to Dismiss. Filed June 18, 1914.

No. 37
MEMO DECISION

Peters & Powell,
Earle & Steinert,
For Plaintiff.
Charles F. Riddell,
J. E. Cochran,
J. E. Frost,

Edwin C. Ewing,
 For Defendants.
 NETERER, District Judge:

An order may be presented denying the motion to dismiss. By the allegations of the bill of complaint, actual fraud is charged between the assessing officers. The facts recited in the complaint are not mistakes of fact or errors of judgment on the part of the assessing and equalizing officers, but actual fraud is charged, and confederation and co-operation with relation to the excessive valuation and assessment of the lands of the complaint. By reason of the allegations and charges made in the bill of complaint, I think justice demands that the bill be answered, and whether relief should be afforded to the complainants will depend upon the evidence which is presented in support of the charges and complaints made.

JEREMIAH NETERER, Judge.

Indorsed: Memorandum Decision Denying Motion to Dismiss. Filed October 26, 1914.

IN EQUITY NO 37
 ORDER DENYING DEFENDANTS' MOTION TO
 DISMISS.

This cause coming on to be heard upon the motion of the defendants Clallam County and Clifford L. Babcock, Treasurer of said County, to dismiss the bill of complaint of the plaintiffs, and the matter having been argued by counsel and submitted to the court, said motion to dismiss is overruled and denied.

To which ruling of this court the defendants except and their exception is allowed.

Done in open court this 30th day of October, 1914.

JEREMIAH NETERER, Judge.

Indorsed: Order Denying Motion to Dismiss. Filed October 30, 1914.

No. 37
 STIPULATION
 IT IS STIPULATED by and between the plain-

tiffs and the defendants herein, at the instance and request of the plaintiffs in order to save unnecessary expense of useless repetition in making up the record for appeal herein, as follows, to-wit:

That there was served by the plaintiffs upon the defendants and filed herein on the 9th day of December, 1914, an amended Bill of Complaint which was in all respects similar in words and figures to the original complaint, save in the following particulars:

(A) In the original bill of complaint, in paragraph VIII thereof, page 4, at line 27 it is alleged by the plaintiffs that the timber upon the lands in the zone in said paragraph referred to amounts, according to the county cruise of Clallam County, to the sum of 1,230,041 $\frac{1}{4}$ M feet; whereas in the amended bill of complaint this aggregate timber in this zone is alleged, in paragraph VIII, page 4, line 25, to be 700,000 M. feet.

(B) In the amended complaint, in paragraph VIII, page 4, line 22, it is alleged that the County of Clallam for the year 1913, fixed the assessment upon poles at 10 cents each and upon piles at 2 cents each within the zone therein referred to, there being no such allegation in the original bill.

(C) In the original bill of complaint, in paragraph X thereof, page 6, line 4, it was alleged that the timber upon the plaintiffs' lands in the zone therein referred to was shown by the county cruise to amount to 1,230,041 $\frac{1}{4}$ M. feet; whereas in the amended bill of complaint, in paragraph X thereof, on page 6, line 3, this aggregate of timber is alleged to be 700,000 M. feet.

(D) In the amended bill of complaint there appear paragraphs XXV A and XXV B which do not appear in the original complaint, said paragraphs reading as follows:

XXV A

"That prior to the assessment and levy of the taxes complained of herein these complainants under instruments of conveyance conveying to them all of the lands hereinabove described, were in the actual

possession and occupation of a portion of said lands for the whole; otherwise said lands are vacant and unoccupied.”

XXV B

“That it is the duty of the Treasurer of Clallam County under the law of the state, after receiving the moneys so taxed, to pay the sum so received in the proportions designated in his tax books to the various road and bridge funds and to the city of Port Angeles and to the state of Washington and to the various funds for which said taxes are collected and distributed under the law, and to other officers and authorities entitled to receive the same, and if the plaintiffs instituted suit to recover back the taxes so paid to the town of Port Angeles or county, or road, or school districts, they would be obliged to bring suit against each one of the taxing bodies receiving the proportionate share of the tax, thereby necessitating a multiplicity of suits, and the proportion of the tax which should go to the state of Washington could not be collected back by any legal proceeding whatever; and if repayment could be compelled from the town of Port Angeles and other taxing bodies, such repayment would not cover the costs, including commissions deducted for the collection of the tax, and penalties, and complainants would be subject to great and irreparable injury for which there is not a complete, adequate or any remedy at law.

That the Treasurer of Clallam County is required under the law, upon the delinquency of said taxes, to immediately issue delinquent certificates against said lands, under which same are authorized to be sold and would be sold to pay said taxes. The levy and existence of said tax and the threatened issuance of delinquent certificates and sale thereunder constitute a cloud upon plaintiffs’ title to said lands and all of them.”

IT IS THEREFORE STIPULATED that in preparing the transcript and printing the record, these changes may be pointed out by interlineation, or by any other appropriate and convenient method.

IT IS FURTHER STIPULATED with reference to the pleadings in this cause that after the closing of the evidence and at the time of the argument of this cause, the defendants, over the objection of the plaintiffs, under circumstances set forth in the statement of facts herein, were allowed to amend their answer in certain particulars, as defendants contended, to correspond with the evidence in the case, and thereafter, on to wit the 3d day of Feb., 1916, the defendants served upon the plaintiffs and filed herein their second amended answer with reference to which it is here and now stipulated that said second amended answer is the same in all respects as the amended answer filed on the 18th day of January, 1915, save only in the following particulars, to-wit:

(A) Paragraph IX was amended to read as follows:

"With reference to paragraph IX of said amended bill the defendants admit the practice by assessors and taxing boards of the custom therein referred to, and admit the pursuit of such custom by county assessors and its recognition and acquiescence by the State Board of Equalization; deny that the assessor of Clallam County gives out and pretends that for the year 1913 he assessed taxable property within Clallam County upon the basis of fifty-three per cent of the true and fair value in money; deny that the members of the County Board of Equalization give out and pretend that they equalized and approved the assessments upon the taxable property within said county upon the basis alleged in said paragraph; deny that the interior timber lands in said county, including the lands owned by the plaintiffs were and are valued in the year 1913 for the purpose of taxation at sums in excess of fifty-three per cent of the true and fair value thereof in money; that other properties in said county, real and personal were valued at sums less than fifty-three per cent of the true and fair value thereof in money; deny that the plaintiffs were discriminated against grossly and intentionally, or at

all, by the assessing officers of Clallam County in the matter of the assessment and taxation of their lands for the year 1913.”

(B) Paragraph X was amended to read as follows:

“With reference to paragraph X of said amended bill, the defendants admit that the timber upon the lands of the plaintiffs, as shown by the cruise made by the county of Clallam, amounts in the aggregate to approximately 700,000,000 feet, the figures set forth therein, and that the assessments upon said lands for the year 1913 were made upon the basis of said cruise; deny that the timber upon the lands of the plaintiffs was over-valued greatly, or at all, by the assessing officers of said county in the valuations put thereon by them for the purpose of taxation in the year 1913; admit that the valuations placed by the assessing officers of said county upon the lands of the plaintiffs for the purpose of taxation for the year 1913, amount to the figures therein set forth, to wit: \$479,990.00; deny that the true and fair value in money of said lands does not exceed the sum of \$550,000.00, and did not exceed that sum in the year 1913; deny that said assessment for the year 1913 was made upon the basis of 87 per cent; that no property in said Clallam County, save the timber lands owned by the plaintiffs and certain other timber lands similarly situated, was assessed in said year 1913 at so great a proportion of its true and fair value in money; deny that the assessment upon the lands of the plaintiffs, or upon any other lands or other property in said county, was in pursuance of any combination and conspiracy between the assessor of Clallam County and the other members of the County Board of Equalization of said county, as alleged in said paragraph, or at all.

(C) Paragraph XII was amended to read as follows:

“With reference to paragraph XII of said amended bill, the defendants admit the election of the assessing officers of Clallam County as alleged in said para-

graph; deny that the assessing officers of said county have combined and concerted together, wrongfully and corruptly, with the intents and purposes alleged, or for any other intent and purpose, or at all; deny that it has been the custom of the assessor of said county to consult and advise with the other members of the County Board of Equalization of said county, and with residents of the Middle and West and East Districts of said county in making his assessment rolls, and that such custom was followed in making his assessment rolls for the years 1912 and 1913; deny that such custom is or was in pursuance of a combination and conspiracy as alleged in said paragraph or at all; deny that the assessment roll does not and did not in the years stated represent the judgment of the assessor; deny that said roll was and is the result of any combination and conspiracy with the other members of the County Board of Equalization; deny that the assessment roll is approved as a matter of course as relates to assessments on timber lands or otherwise by the County Board of Equalization; deny that no fair hearing is possible to be had on appeal to said Board; deny that the custom alleged in said paragraph or any other similar or unlawful custom has been followed in said county for several years continuously past, or at all; and deny that the plaintiffs were refused a hearing upon appeal to said Board in 1910, as alleged in said paragraph, or at all, or that the conversation between attorney for the plaintiffs and the members of said Board took place at said time or at all, with reference to the futility of introducing evidence as to the value of timber lands."

(D) Paragraph XVII was amended in the following respect:

Plaintiffs' amended bill had charged among other things as follows:

"That upon the Straits of Fuca and immediately adjoining tidewater there lie fine bodies of fir, spruce, cedar and hemlock timber, which can readily be logged to the Straits at the present time."

This the defendants had admitted in paragraph

XVII of their amended answer, but deny in paragraph XVII of their second amended answer.

And with this explanation IT IS STIPULATED that plaintiffs' amended bill and the defendants' second amended answer need not be set out in this transcript on appeal.

EARL & STEINERT,
PETERS & POWELL,
Attorneys for Plaintiffs.
EDWIN C. EWING,
C. F. RIDDELL,
Attorneys for Defendants.

Indorsed: Stipulation. Filed November 6, 1916.

No. 37

DEFENDANTS' ANSWER TO AMENDED BILL
OF COMPLAINT

To the Honorable Judges of the above entitled Court:

Come now Clallam County, a municipal corporation of the State of Washington, and Clifford L. Babcock, Treasurer of said Clallam County, the defendants named in the above entitled action, and for answer to the amended bill of complaint of the plaintiffs herein respectfully submit the following:

I

With reference to paragraph I defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations therein contained, but they are willing to admit the same.

II

With reference to paragraph II, these defendants admit the allegations thereof.

III

With reference to paragraph III, these defendants admit that the defendant, Clifford L. Babcock, now is and ever since the 9th day of January, 1911, has been the duly elected, qualified, and acting treasurer of Clallam County, Washington, and a resident and inhabitant of said Clallam County.

IV

With reference to paragraph IV these defendants admit the allegations thereof.

V

With reference to paragraph V these defendants admit the allegations thereof.

VI

With reference to paragraph VI, these defendants admit that the timber lands of said County have been cruised and estimates of the quantities and quality of the different species of timber carefully made and that such estimates were consulted and were a factor in fixing the taxable values of timber lands in said county and these defendants admit that the geographical location, availability, physical characteristics of the ground and other elements influencing the market value of timber and timber lands were carefully considered in making assessments referred to in said paragraph VI; and these defendants deny all the other allegations contained in said paragraph VI.

VII

With reference to paragraph VII these defendants deny the allegations thereof.

VIII

With reference to paragraph VIII these defendants admit that the assessing officers of said county for the year 1913 put upon the timber and the lands of plaintiffs the valuations therein set forth; admit that plaintiffs are the owners of lands and timber lands to the extent and in the amounts of figures therein stated; and deny all the other allegations thereof.

IX

With reference to paragraph IX these defendants deny all the allegations thereof.

X

With reference to paragraph X, these defendants admit that the assessing officers of said county for the year 1913 put upon the timber and lands of the plaintiffs the valuations therein set forth; admit that the plaintiffs are the owners of lands and timber to

the extent and in the amounts and figures therein stated; and deny all the other allegations therein contained, and allege that all of said lands referred to in said paragraph are assessed for taxes at the same proportion of their market values as other similar timber lands of said county.

XI

With reference to paragraph XI, these defendants admit the allegations thereof.

XII

With reference to paragraph XII these defendants deny the allegations thereof.

XIII

With reference to paragraph XIII, these defendants deny the allegations thereof.

XIV

With reference to paragraph XIV, these defendants admit the composition of the County Board of Equalization of Clallam County and the residence of the constituent members thereof as alleged in said paragraph, and deny all the other allegations thereof.

XV

With reference to paragraph XV these defendants deny the allegations thereof.

XVI

With reference to paragraph XVI these defendants deny the allegations thereof.

XVII

With reference to paragraph XVII these defendants admit the valuation of the timber upon the lands of plaintiffs for the year 1913, as therein set forth, and deny all the other allegations thereof.

XVIII

With reference to paragraph XVIII these defendants deny the allegations thereof.

XIX

With reference to paragraph XIX these defendants deny the allegations thereof.

XX

With reference to paragraph XX these defendants admit the provisions of Section 9112 of Remington &

Ballinger's Code therein referred to but allege that the act of the Legislature of which said section is a part was not the law of the State of Washington at the time the assessment referred to in this action was made by the proper officers of said Clallam County; admit the assessment of taxes for the year 1913 at the amount therein set forth and that the officers therein described had and have the knowledge of the plaintiffs' property therein described, as therein alleged; and deny all the other allegations thereof.

XXI

With reference to paragraph XXI, these defendants deny all the allegations thereof and allege that the assessments of said lands and the valuations put thereon are the result of the honest deliberation of the assessing officers of said county, formed after careful investigations and upon full information.

XXII

With reference to paragraph XXII, these defendants deny the allegations thereof.

XXIII

With reference to paragraph XXIII these defendants deny the allegations thereof.

XXIV

With reference to paragraph XXIV, these defendants admit the extension of the taxes and the delivery of the tax rolls to the Treasurer of Clallam County, and that the amount of taxes demanded by Clifford L. Babcock as Treasurer of said Clallam County is in the sum therein stated, and deny the other allegations thereof.

XXV

With reference to paragraph XXV these defendants admit the tender of the amount therein stated and that the said Clifford L. Babcock as Treasurer of said Clallam County has refused to accept said tender as payment in full of the taxes upon the lands of the plaintiffs for the year 1913; and admit the payment by the plaintiffs of the taxes assessed against the lands of the plaintiffs for all years prior to 1913; and deny all the other allegations thereof.

XXVI

With reference to paragraph XXVI these defendants deny the allegations thereof.

XXVII

With reference to paragraph XXVII, these defendants admit the jurisdiction of this court but deny all of the other allegations of said paragraph.

XXVIII

With reference to paragraph XXVIII, these defendants deny the allegations thereof.

Wherefore, having fully answered the bill of complaint herein, defendants pray to be hence dismissed, with their reasonable costs and charges in this behalf most wrongfully sustained, and for such other and further relief as to the court shall seem meet, just and equitable.

CLALLAM COUNTY,

A Municipal Corporation.

C. L. BABCOCK,

As Treasurer of said Clallam County.

By EDWIN C. EWING,

Their Attorney.

J. E. COCHRAN,

J. E. FROST,

E. C. EWING,

C. F. RIDDELL,

Attorneys for Defendants. Postoffice and office address: 627 Colman Building, Seattle, Washington.

Indorsed: Defendants' Answer to Amended Bill of Complaint. Filed November 20, 1914.

No. 37

MOTION TO STRIKE

Come now the plaintiffs and move against the defendants' answer to the Amended Bill of Complaint, as follows:

I

Referring to paragraph VI plaintiffs move to strike the same, for the reason that it contains affirmative matter not responsive to the plaintiffs' bill, and for the

reason that it does not specifically answer or deny the charges of the plaintiffs' bill.

II

Referring to paragraphs VII, VIII, IX, and X, the plaintiffs move to strike the same and each of them, on the ground that they are not sufficiently specific admissions or denials of the plaintiffs' bill and particularly to strike the last three lines of paragraph X, upon the ground that same is an injunction of affirmative matter not called for by the bill or warranted in the answer.

III

Referring to paragraphs XII, XIII, XIV, XVI, XVII, XVIII and XX, plaintiffs move to strike the same because not specifically responsive to plaintiffs' bill, and to require the defendants to set out specifically admissions or denials of the allegations of plaintiffs' bill referred to in said sections.

IV

Referring to paragraphs XXII and XXIII plaintiffs move the court to strike the same and to require defendants to specifically answer the allegations of the plaintiffs' bill, and either to affirm or deny as to the specific charges of the same.

EARLE & STEINERT,
PETERS & POWELL,

Attorneys for Plaintiffs.

Indorsed: Motion to Strike. Filed November 30, 1914.

No. 37

ORDER ALLOWING PLAINTIFFS' MOTION TO
MAKE MORE DEFINITE AND CERTAIN

This matter having come on to be heard in the above entitled court upon the motion of the plaintiffs to strike certain paragraphs of the defendants' answer, and to require the same to be made more definite and certain, plaintiffs being present in court by their counsel, Messrs. Peters & Powell, and the defendants being present in court by Mr. Edwin C. Ewing, their counsel.

The motion of plaintiffs was allowed, and defendants allowed ten days to answer.

Done in open Court this 21st day of December, 1914.

JEREMIAH NETERER, Judge.

Indorsed: Order Allowing Plaintiffs' Motion to Make More Definite and Certain. Filed December 21, 1914.

No. 37

AMENDED ANSWER TO AMENDED BILL OF COMPLAINT.

To the Honorable Judges of the above entitled court:

Come now Clallam County, a municipal corporation of the State of Washington, and Clifford L. Babcock, Treasurer of said Clallam County, the defendants named in the above entitled action, and by leave of court first had and obtained file this their amended answer to the amended bill of complaint of the plaintiffs herein:

I

With reference to paragraph I of said amended bill, the defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations therein contained, but they are willing to admit the same and not put the plaintiffs to proof thereof.

II

With reference to paragraph II of said amended bill, the defendants admit the allegations thereof.

III

With reference to paragraph III of said amended bill, the defendants admit that the defendant, Clifford L. Babcock, now is, and ever since the 9th day of January, 1911, has been, the duly elected qualified and acting Treasurer of Clallam County, Washington, and a resident and inhabitant of said Clallam County.

IV

With reference to paragraph IV of said amended bill, the defendants admit the allegations thereof.

V

With reference to paragraph V of said amended bill, the defendants admit the allegations thereof.

VI

With reference to paragraph VI of said amended bill, the defendants admit that for the purpose of assessment for taxation, and as a basis therefor, the assessing officers of Clallam County have from time to time within the period of five or six years last past caused timber lands in said county to be cruised and the cruises and estimates thus made to be adopted by the county; that most of the timber lands in the county owned by private parties as distinguished from Government lands have now been cruised, and that all the lands owned by the plaintiffs have been so cruised, and that so far as respects timber lands within the county upon which cruises have thus been made, it is claimed by the assessing officers that the same have been cruised upon the basis of the cruises thus obtained; admit that the assessments made by the assessing officers of the county have been made according to certain zones or districts which the assessing officers have laid off; but deny that said zones or districts have been laid off and determined arbitrarily, unreasonably or unlawfully, or without reference to and in disregard of the true and fair value in money of timber on the lands within such zones or districts, or in any other manner than fairly, truly, impartially, and as a result of the honest and mature deliberation and judgment of the assessing officers of said county formed upon full information after careful inquiry and investigation.

VII

With reference to paragraph VII of said amended bill, the defendants deny that the zone therein referred to was arbitrarily laid off; admit the geographical location of said zone, but deny its dimensions and area as alleged in said paragraph; deny that within this zone are included those timber lands which of all timber lands within the county are of the greatest value; admit that within this zone the timber is valued for the year 1913 by the assessing officers of Clallam County at the figures set forth in said paragraph; admit that in this and all other zones, in addition to the values placed by the assessing officers upon the timber, there

was for the year 1913 placed upon the lands themselves a valuation of \$1 per acre; deny that the same, in the case of the plaintiffs' lands or the lands of any other persons, was done arbitrarily, unreasonably and unlawfully and without any reference to the actual value thereof, or in any other manner than fairly, truly, impartially and according to law; and deny that many or any of the lands of the plaintiffs are of no value whatsoever independent of the timber standing or being thereon.

VIII

With reference to paragraph VIII of said amended bill, the defendants deny that the zone therein referred to was arbitrarily, unreasonably and unlawfully laid off by the assessing officers; admit that it lies in the Western part of Clallam County; deny that no part thereof lies nearer to the Straits than approximately four to six miles and that no lands within this zone owned by the plaintiffs lie nearer to the Straits than approximately nine miles and that the great body of the lands owned by the plaintiffs within this zone lie much more distant therefrom; admit the form and extent of said zone as alleged in said paragraph; deny that there are no harbors upon the Pacific Ocean within the counties of Clallam or Jefferson at or through which the timber on the lands of the plaintiffs might or could be brought to market; admit that within this zone there is a large acreage of land and that upon the timber lands within this zone the assessing officers of Clallam County put for the year 1913, for the purposes of taxation, the valuations therein set forth; admit that the plaintiff is the owner of lands and timber to the extent and in the amounts of the figures therein set forth, and that the value of the lands of the plaintiffs within this zone, as fixed and determined by the assessing officers of Clallam County for the year 1913, for the purposes of taxation is as stated therein; deny that all the lands owned by the plaintiffs within this zone or the other zones or districts set off by said assessing officers are separated from the Straits of Fuca by a range of mountains.

IX

With reference to paragraph IX of said amended bill, the defendants deny the practice by assessors and taxing boards of the custom therein referred to, and deny the pursuit of such custom by county assessors and its recognition and acquiescence by the State Board of Equalization; deny that the assessor of Clallam County gives out and pretends that for the year 1913 he assessed taxable property within Clallam County upon the basis of fifty-three per cent of its true and fair value in money, or upon any other and different basis than that provided by the laws of the State of Washington at the time the assessments for the years 1912 and 1913 were made; deny that the members of the County Board of Equalization give out and pretend that they equalized and approved the assessments upon the taxable property within said county upon the basis alleged in said paragraph, or upon any other or different basis than that provided by the laws of the State of Washington at the time the assessments for the years 1912 and 1913 were made; admit that the interior timber lands in said county, including the lands owned by the plaintiffs were and are valued in the year 1913 for the purpose of taxation at sums in excess of fifty-three per cent of the true and fair value thereof in money; deny that other properties in said county, real and personal, were valued at sums less than fifty-three per cent of the true and fair value thereof in money; deny that the plaintiffs were discriminated against grossly and intentionally, or at all, by the assessing officers of Clallam County in the matter of the assessment and taxation of their lands for the year 1913.

X

With reference to paragraph X of said amended bill, the defendants admit that the timber upon the lands of the plaintiffs, as shown by the cruise made by the county of Clallam, amounts in the aggregate to the figures set forth therein, and that the assessments upon said lands for the year 1913 were made upon the basis of said cruise; deny that the timber upon the lands of the plaintiffs was over-valued greatly, or at all, by

the assessing officers of said county in the valuations put thereon by them for the purposes of taxation in the year 1913; admit that the valuations placed by the assessing officers of said county upon the lands of the plaintiffs for the purpose of taxation for the year 1913 amount to the figures therein set forth; deny that the true and fair value in money of said lands does not exceed the sum of \$550,000, and did not exceed that sum in the year 1913; deny that said assessment for the year 1913 was made upon the basis of 87 per cent, or upon any other or different basis than the true and fair value in money of all the property assessed; deny that no property in said Clallam County, save the timber lands owned by the plaintiffs and certain other timber lands similarly situated was assessed in said year 1913 at so great a proportion of its true and fair value in money; deny that the assessment upon the lands of the plaintiffs, or upon any other lands or other property in said county, was in pursuance of any combination and conspiracy between the assessor of Clallam County and the other members of the County Board of Equalization of said county, as alleged in said paragraph, or at all.

XI

With reference to paragraph XI of said amended bill, the defendants admit the allegations thereof.

XII

With reference to paragraph XII of said amended bill, the defendants admit the election of the assessing officers of Clallam County as alleged in said paragraph; deny that the assessing officers of said county have combined and concerted together, wrongfully and corruptly, with the intents and purposes alleged, or for any other intent and purpose, or at all; admit that it has been the custom of the assessor of said county to consult and advise with the other members of the County Board of Equalization of said county, and with residents of the Middle and West and East Districts of said county in making his assessment rolls, and that such custom was followed in making his assessment rolls for the year 1912 and 1913, but deny

that such custom is or was in pursuance of a combination and conspiracy as alleged in said paragraph or at all; deny that the assessment roll does not and did not in the years stated represent the judgment of the assessor, and deny that said roll was and is the result of any combination and conspiracy with the other members of the County Board of Equalization; deny that the assessment roll is approved as a matter of course as relates to assessments on timber lands or otherwise by the County Board of Equalization; deny that no fair hearing is possible to be had on appeal to said Board; deny that the custom alleged in said paragraph or any other similar or unlawful custom has been followed in said county for several years continuously past, or at all; and deny that the plaintiffs were refused a hearing upon appeal to said Board in 1910, as alleged in said paragraph, or at all, or that the conversation between attorney for the plaintiffs and the members of said Board took place at said time or at all, with reference to the futility of introducing evidence as to the value of timber lands.

XIII

With reference to paragraph XIII of said amended bill, the defendants deny that at the times therein stated or at any other times, for the reasons or with the intent and purpose therein alleged, or for any other purpose whatsoever, were gross or any discriminations, practiced by the assessing officers of said Clallam County against the plaintiffs or any other persons, or in favor of any other persons, as alleged in said paragraph, or at all.

XIV

With reference to paragraph XIV of said amended bill, the defendants allege that they are without knowledge or information as to the examination of the assessment rolls of said county by the plaintiffs, and the result thereof, and they therefore deny the allegations of said paragraph with regard thereto; deny that the lands and other properties situated at Port Angeles and subject to taxation are valued upon said assessment rolls as equalized for such years at not to exceed

10 to 20 per cent of their true and fair value in money; admit the composition of the County Board of Equalization of Clallam County and the residence of the constituent members thereof as therein alleged, and that the major portion of the population of said county is at Port Angeles; deny that for the purposes therein alleged or for any other purpose, did the three members of said Board resident at Port Angeles, combine and conspire with the Commissioner from the East District, or any other person, against the plaintiffs and other owners of timber lands in the interior of said county, as therein alleged, or against any other person, or at all.

XV

With reference to paragraph XV of said amended bill, the defendants allege that they are without knowledge or information as to the examination by the plaintiffs of the assessment rolls of Clallam County for the years 1912 and 1913 and of property values within said county, and the results thereof, and they therefore deny the allegations of said paragraph with regard thereto; and deny that the farming lands and other properties situate in the East end and subject to taxation are valued upon said tax rolls as equalized for such years at not to exceed 25% to 30% of their true and fair value in money.

XVI

With reference to paragraph XVI of said amended bill, the defendants allege that they are without knowledge or information as to the examination by the plaintiff of the assessment rolls of Clallam County for the years 1912 and 1913 and of property values within said county, and the results thereof, and they therefore deny the allegations of said paragraph with regard thereto; and deny that the personal property within said county described in said paragraph is valued by the assessing officers of said county for the year 1913 at not to exceed 10% to 15% of its true and fair value in money.

XVII

With reference to paragraph XVII of said amend-

ed bill, the defendants admit the location of the lands of the plaintiffs as therein stated; deny that said lands are wholly destitute of facilities for transportation, and that it is impossible to bring the timber therefrom into market or that it is necessary that facilities be provided for transportation to Gray's Harbor on the South or the Straits of Fuca on the North; admit that Gray's Harbor is far distant and that no railroad extends further North from that direction than Moclips, and that Moclips is sixty miles from the plaintiffs' lands; deny that the lands of the plaintiffs are as distant from the Straits of Fuca as therein stated or that said lands are cut off from the Straits by a range of mountains or that it is impossible to bring the timber from said lands except by transportation across such range of mountains; deny that such transportation is impossible of accomplishment except by the construction of a railroad at great expense, or that such expense is beyond the present means at the command of the plaintiffs or which is prohibitive under the present condition of the lumber market or conditions which have at any time heretofore prevailed, or that the facts alleged in said paragraph have a direct and important bearing upon the present value of the lands of the plaintiffs; admit that upon the Straits of Fuca and immediately adjoining tide water, there lie fine bodies of fir, spruce, cedar and hemlock timber, which can readily be logged to the Straits as stated, and that extensive logging operations now are and for many years have been carried on in that portion of said Clallam County; admit that this Straits timber (so called) is in the zone or district described in paragraph VII of said amended bill, but deny that said zone was arbitrarily, unreasonably and unlawfully laid off by the assessing officers of said county; admit that in the zones described in said paragraphs VII and XVII the valuations put upon the timber are as stated in said paragraph XVII; and deny that the true and fair value in money of the so called Straits timber is at least twice the true and fair value in money of the timber on the lands of the plaintiffs.

XVIII

With reference to paragraph XVIII of said amended bill, the defendants admit the geographical location of Port Angeles as therein stated, and the desires and ambitions of the inhabitants thereof; deny the statements therein imputed to inhabitants of Port Angeles and the Assessor; deny the combination and conspiracy therein alleged or any combination and conspiracy; deny the purposes therein imputed to the assessing officers of said county, and the assurances of influential citizens of Port Angeles therein set forth; deny the ownership of real property in Port Angeles by the majority of the members of the Board of Equalization, and the personal interest and desire for aggrandizement of the members of said Board for the purposes therein imputed or for any other purposes incompatible with their official positions and duties.

XIX

With reference to paragraph XIX of said amended bill, the defendants deny that the assessments therein complained of are unequal, discriminating or unlawful, or that they are the result, direct and immediate or otherwise, of any intent, either corrupt or unlawful, or in any wise incompatible with the official positions and duties of said officers, of the County Assessor and the members of the County Board of Equalization of said Clallam County, to discriminate against the plaintiffs or any other persons, or in favor of any persons, either as stated in said paragraph or otherwise, or to undervalue or overvalue the taxable properties in said county for the purposes therein alleged or for any other purposes whatsoever.

XX

With reference to paragraph XX of said amended bill, the defendants admit the provisions of §9112 of Volume 3 of Remington & Ballinger's Annotated Codes and Statutes of Washington therein referred to; deny that the true and fair value in money of the lands of the plaintiffs therein referred to does not exceed, and did not exceed, when the assessments for 1912 and 1913 were made, the sum therein stated; deny that

under said statute any assessment of lands of the plaintiffs for purposes of taxation at a sum greater than the sum of \$275,000 is unjust, illegal and void; admit that the true and fair value in money of the lands owned by the plaintiffs is known to the Assessor of Clallam County and to the members of the said County Board of Equalization, and was so known at the time of the making of said assessment and the approval thereof by said Board; deny that said officers in making and equalizing such assessments disregarded the duty placed upon them by law, and deny that said officers fraudulently and unlawfully caused said lands to be assessed at a sum exceeding by \$204,990, 50% of the true and fair value in money of said lands; deny that the assessment of said lands was made and approved by said officers with a fraudulent or corrupt intent, or with any other intent incompatible with their official positions and duties, either as stated in said paragraph or otherwise; admit that the taxes levied for the year 1913 upon the lands of the plaintiffs aggregate the sum therein stated, but deny that had said taxes been levied upon the true and fair value in money of said lands, the same would not have exceeded the sum of \$9250.00; deny that the practices of the assessing officers of said county in the matter of the assessment of the lands of the plaintiffs for the year 1913, or any other year, were fraudulent or unlawful, or in any wise incompatible with the duties of said officers, or that there are or were imposed upon the lands of the plaintiffs for the said year \$6559 in excess of all taxes which might or could equitably or lawfully be imposed thereon.

XXI

With reference to paragraph XXI of said amended bill, the defendants deny either an over valuation of the lands therein referred to, or the undervaluation of other property in said county and the pursuit and practice of the policy therein imputed to the assessing officers of said county, or any other policy incompatible with their official duties, for several years last past, or at all; deny that the assessment of the lands of the

plaintiffs and other owners of timber lands in the interior of said county are proportionately higher than the assessments imposed upon other real and personal properties in said county, or that said assessments are or result in an actual or any fraud upon the plaintiffs; deny that any plan resulting in fraud upon the plaintiffs or any other persons is arbitrarily and systematically or otherwise, adopted and carried out by the officers therein referred to or by the defendants herein.

XXII

With reference to paragraph XXII of said amended bill, the defendants deny that the assessments upon the lands of the plaintiffs were made by the assessor of said county for the year 1912 at a high, excessive, unlawful and illegal rate as specified in said amended bill, and upon the unlawful and fraudulent basis therein mentioned; admit that thereafter the County Board of Equalization met to consider and review the assessment roll; deny that such review was ostensible, specious and fraudulent in character; deny that the members of said Board had combined and conspired with the Assessor as therein stated, or at all; admit the appearance and protest of the plaintiffs before said Board at its regular sitting in 1912 as therein stated; admit that the protests of the plaintiffs were overruled by the Board, but deny that the same were arbitrarily disregarded or that the petition of the plaintiffs to equalize their assessment was arbitrarily denied.

XXIII

With reference to paragraph XXIII of said amended bill, the defendants deny that the assessments upon the lands of the plaintiffs were made by the assessor of said county for the year 1913 at a high, excessive, unlawful and illegal rate as specified in said amended bill, and upon the unlawful and fraudulent basis therein mentioned; admit that thereafter the County Board of Equalization met to consider and review the assessment roll; deny that such review was ostensible, specious and fraudulent in character; deny that the members of said Board of Equalization had combined and conspired with the assessor as therein

stated, or at all; admit the appearance and protest of the plaintiffs before said Board at its regular sitting in 1913 as therein stated; admit that the protests of the plaintiffs were overruled by the board, but deny that the same were arbitrarily disregarded or that the petition of the plaintiffs to equalize their assessment was arbitrarily denied.

XXIV

With reference to paragraph XXIV of said amended bill, the defendants admit the extension of the taxes and the delivery of the tax rolls to the Treasurer of Clallam County, but deny that the basis of such extension and such assessment was high, excessive, unlawful and fraudulent as alleged therein; admit that said Treasurer has demanded payment of such taxes as shown by said rolls, but deny that said taxes are illegal, fraudulent or arbitrary; admit that the taxes so demanded by said Treasurer amount in the aggregate to said sum of \$15,809, and that said Treasurer, unless restrained by order of this court, will sell the property of the plaintiffs to satisfy such taxes.

XXV

With reference to paragraph XXI of said amended bill, the defendants admit the tender of the amount therein stated, and that the said Clifford L. Babcock, as Treasurer of said Clallam County, has refused to accept said tender as payment in full of the taxes upon the lands of the plaintiffs for the year 1913; deny that the sum of money thus tendered is more than the taxes justly due and equitably due from the plaintiffs as therein alleged; deny that the plaintiffs' property was assessed upon any different basis than all the other property within said county or that said assessments were other than legal and equitable, equal to and uniform with the assessments upon all other property within said county; admit that the taxes upon the lands of the plaintiffs for all years prior to 1913 have been paid and discharged; and deny that the taxes for the year 1913 have been paid and discharged by the tender and payment as specified in said paragraph.

XXV-A

With reference to paragraph XXV-A of said amended bill, the defendants admit the allegations thereof.

XXV-B

With reference to paragraph XXV-B of said amended bill, the defendants admit the duties of the Treasurer of Clallam County with regard to the disposition of taxes collected by him, as stated therein; deny that if the plaintiffs instituted suit to recover back taxes paid, as alleged in said paragraph, they would be obliged to bring suit against each one of the taxing bodies therein mentioned, and deny that thereby there would be necessitated a multiplicity of suits, and deny that the proportion of the tax going to the State of Washington could not be collected back, or that repayment from the town of Port Angeles would not cover costs and other items referred to therein, or that plaintiffs would thereby be subjected to great and irreparable injury or that plaintiffs would not have a complete, adequate or any remedy at law; admit the duties of the Treasurer of Clallam County with regard to the issuance of certificates of delinquency as therein alleged; and deny that the levy and existence of the tax therein referred to constitute a cloud upon the title to the lands of the plaintiffs or any of them.

XXVI

With reference to paragraph XXVI of said amended bill, the defendants deny that the assessment of the lands of the plaintiffs for the year 1913 is arbitrary, unjust, illegal or fraudulent as compared with the assessment of all other property in said Clallam County, or otherwise, or that said assessment as made by the assessor and assessing officers of said county is prohibited by the Constitution of the State of Washington, or is in violation of §§ 1 and 2 of Article VII thereof, as therein alleged, or that the taxes upon the plaintiffs' lands are not equal and uniform as compared with all other property in said county.

XXVII

With reference to paragraph XXVII of said

amended bill, the defendants deny that if the levy and assessments of taxes upon the lands of the plaintiffs for the year 1913 be not vacated, set aside and held for naught, the same will result in the taking of the property of the plaintiffs without due process of law or in denying to the plaintiffs the equal protection of the laws, or that the same would be a violation of the Fourteenth Amendment to the Constitution of the United States; but admit the jurisdiction of this Honorable Court.

XXVIII

With reference to paragraph XXVIII of said amended bill, the defendants deny that the plaintiffs are remediless at common law or that they are releivable only in a court of equity as therein alleged.

FIRST AFFIRMATIVE DEFENSE.

And for a first further and affirmative defense to the cause of action set forth in the plaintiffs' amended bill of complaint herein, the defendants allege:—

I

That the true and fair value in money of timber and timbered lands is dependent, among other factors, upon the character and quality or grade of timber, the thickness of the stand of timber or quantity per acre or upon a given tract, the topography of the ground upon which the timber stands, the presence of water for use in camps, logging engines and locomotives, the probability of fires, the size and contiguity of the tracts of land, large or contiguous tracts constituting practically solid bodies of land containing sufficiently large quantities of timber to constitute the same profitable logging enterprises being commercially more valuable per acre or per M feet of timber than smaller or isolated tracts not sufficient in size to warrant the construction of roads, railroads, camps and other facilities necessary to the removal of the timber.

The lands of the plaintiffs, referred to in their amended bill of complaint herein, consist of such large and practically solid bodies, bearing timber of valuable character, of exceptionally high grade and of thick and heavy stand, and constitute desirable, advantageous and

profitable logging enterprises from an operating standpoint, making the same proportionately more valuable than smaller or isolated tracts of timbered lands in the same localities, or otherwise similar in character to the lands of the plaintiffs.

II

That on or about the year 1908, the assessing officers of Clallam County caused to be employed experienced, capable and competent timber cruisers to make, and who did make, full, complete and detailed cruises and estimates of the character, quality and quantity of the timber standing upon the various legal sub divisions of land in said county. All of the timbered lands in said county in private ownership, including the lands of the plaintiffs, have now been so cruised and platted into tracts or zones, and detailed reports and estimates of such cruises made and filed in the office of the County Assessor of said county respecting the same. These reports, estimates and plats, taking into due consideration the factors of value hereinabove set forth, and also the availability, ease or difficulty of logging, and physical characteristics of the lands, together with such other information with reference to agricultural possibilities of the lands, the presence of mineral deposits and other similar factors of value as the assessing officers were able to obtain upon independent investigation, were, and have been consulted and used by such officers to assist in ascertaining and determining the values of said lands for the purposes of assessment and taxation, and such facts, plats, estimates, reports, data and other information, with due attention to geographical location, availability, physical characteristics of the ground, and other elements influencing the value of timber and timbered lands, as hereinabove set forth, were carefully considered by such officers in making the assessments referred to in the plaintiffs' amended bill of complaint herein.

The assessments thus made, as hereinabove and hereinafter referred to, were not arbitrary, capricious, unlawful, unreasonable, inequitable, disproportionate, or the result of any combination or conspiracy whatso-

ever, as alleged in the plaintiffs' amended bill of complaint herein, or at all, but were the result of the honest, sincere, conscientious, mature and deliberate judgment and belief of the assessing officers and equalizing officers of said county formed upon and after full and careful investigation of all the facts and circumstances surrounding said lands and affecting their values, as hereinabove set forth, and a full, free and fair hearing as required by law.

III

That by the laws of the State of Washington in force and effect at the time the assessment for the years 1912 and 1913 complained of in plaintiffs' said amended bill of complaint herein were made, and prior thereto, as hereinafter set forth, it was and is provided:—

(Laws of 1897, Chapter LXXI)

§ 1. That all real and personal property now existing, or that shall be hereafter created or brought into this state shall be subject to assessment and taxation upon equalized valuations thereof, fixed with reference thereto on the first day of March at twelve o'clock meridian, in each and every year in which the same shall be listed, and

§ 2. That real property for the purposes of taxation, shall be construed to be the land itself, and all buildings, structures and improvements, or other fixtures of whatsoever kind thereon, and all rights and privileges thereto belonging or in any wise appertaining, and all quarries and fossils in and under the same, which the law defines, or the courts may interpret, declare and hold to be real property, for the purposes of taxation, and

§ 6. That all real property in this state subject to taxation shall be listed and assessed under the provisions of this act in the year 1900 and biennially thereafter on every even numbered year with reference to its value on the first day of March preceding the assessment, and that all real estate subject to taxation shall be listed by the assessor each year in the detailed and assessment list and in each odd numbered year the valuation of each tract for taxation shall be the same

as the valuation thereof as equalized by the county board of equalization in the preceding year, and

§ 42. That all property shall be assessed at its true and fair value in money; that the assessor shall value each article or description of property by itself, and at such sum or price as he believes the same to be fairly worth in money at the time such assessment is made; that in assessing any tract or lot of real property, the value of the land, exclusive of improvements, shall be determined; in valuing any property on which there is a coal or other mine, or stone or other quarry, the same shall be valued at such price as such property, including the mine or quarry, would sell at a fair voluntary sale for cash.

IV

That the assessment for the year 1913, complained of in the plaintiffs' amended bill of complaint, was the assessed and equalized value of the lands of the plaintiffs for the year 1912, upon which the plaintiffs paid all taxes levied and assessed without protest; that the assessments of the lands of the plaintiffs, described in their said amended bill of complaint, based upon the cruises of timbered lands in said county, as herein set forth, began and were made in the year 1910, and were used and consulted and adopted in 1911 and 1912, and have continued ever since; that the plaintiffs, as alleged in their amended bill of complaint herein, paid without protest all of the taxes levied and assessed upon their said lands for the years, 1910, 1911 and 1912.

V

That the methods and bases upon which, and the laws of the State of Washington under which, the assessments of timbered lands in Clallam County, including the lands of the plaintiffs, have been made since the year 1910, have at all times since that date, been known to and acquiesced in by the plaintiffs.

VI

That under the laws of the State of Washington, all taxes for State, County, Municipal and other purposes, are levied in specific sums and charged directly to the respective counties of said State; the rate per

centum necessary to raise the taxes so levied in dollars and cents is computed and ascertained by the County Assessor of each county; that after taxes are thus levied, neither the county nor the property therein can be relieved of the duty of the payment of such taxes; that deficiencies owing to a reduction in the amount of taxes to be paid by any property owner or tax payer, or to a failure to collect taxes for any reason, are by the laws of said State, required to be added to, made up and collected under future assessments and levies, all of which is known to the plaintiffs.

That the lands of the plaintiffs, as admitted by the allegations of their amended bill of complaint herein, are not assessed or taxed at any greater or higher value than other timbered lands in said county of similar character or similarly situated to the lands of the plaintiffs, and upon which the taxes and assessments have been paid by the owners thereof.

That under the laws of the State of Washington, county boards and officials are forbidden and are without authority to remit or grant refunds of taxes paid, all of which is known to the plaintiffs herein; that the plaintiffs neglected and delayed to take proper or any steps, or to bring any suit or other proceeding to correct the alleged inequitable assessments referred to in their said amended bill of complaint herein, until after the larger portion of the taxes levied upon other lands similar in character and similarly located to the lands of the plaintiffs had been paid, and if relief as prayed for in the plaintiffs' said amended bill of complaint is granted, other owners of property similar in character and similarly situated to the lands of the plaintiffs in said county, will have been for the year 1913, and in the future will be, compelled to pay an unjust and unfair proportion of the taxes levied upon property in said county.

VII

That by reason of the premises, and the facts and circumstances hereinabove recited, the plaintiffs have been and are guilty of laches and are precluded and estopped to question or deny the legality, fairness or

correctness of the assessment and levy of taxes upon their said lands for the year 1913, and they cannot, in equity and good conscience, now be heard to complain thereof.

SECOND AFFIRMATIVE DEFENSE

And for a second and further affirmative defense to the cause of action set forth in the plaintiffs' amended bill of complaint herein, the defendants allege:—

I

That they hereby refer to paragraphs I, II, III and IV of their first and further affirmative defense hereinabove set forth, and by such reference adopt the same and make them a part of this second affirmative defense.

II

That Section 9112 of Volume 3 of Remington & Ballinger's Annotated Codes and Statutes of Washington was not, and did not become, the law of the State of Washington, until on and after the 12th day of June, 1913, subsequent to the time when the assessment of the lands of the plaintiffs complained of in said amended bill of complaint was made, and therefore did not govern or apply the said assessment of the lands of the plaintiffs.

WHEREFORE, having fully answered the said amended bill of complaint herein, the defendants pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained and for such other and further relief in the premises as to the Court shall seem meet, just and equitable.

CLALLAM COUNTY,
CLIFFORD L. BABCOCK,
as Treasurer of said County,
Defendants.

By EDWIN C. EWING,
Their Attorney.

J. E. Cochran
J. E. Frost
C. F. Riddell

Edwin C. Ewing

Attorneys for Defendants.

Office and Post Office Address:—

627 Colman Building,
Seattle, Washington.

Indorsed: Amended Answer to Amended Bill of
Complaint. Filed January 18, 1915.

No. 37

STIPULATION

It is stipulated between plaintiffs and defendants
herein as follows, to wit:

That the amount of money alleged by complainants
to have been tendered in this cause and by it deposited
with the Clerk of this court in furtherance of its tender,
may be paid over by the Clerk to the Treasurer of Clal-
lam County and that such payment shall be received by
the County Treasurer and operate as a credit to that
extent upon the claim for taxes of the county against
the complainants, with respect to the lands involved
in this suit and that there shall be no penalty or in-
terest charged or collected by the county or its treasurer
against these plaintiffs or these lands, on account of
the amount so paid in upon said taxes from and after
the date of payment herein contemplated to the County
Treasurer, whatever the event of this litigation.

With reference to any commissions to be deducted
by the Clerk of this Court on disbursing under this
stipulation the moneys so paid, it is agreed that this
feature shall follow the direction of the court in the
final determination of this cause.

The payment to and receipt by the County Treas-
urer of this money shall not prejudice the position of
plaintiffs or defendants in this litigation, or operate to
bar or foreclose the plaintiffs or defendants in their
contentions herein, save pro tanto, as a credit to this
amount to be given this day as payment on account
of the taxes involved; but it shall operate as a waiver
of any claim to penalty or interest on the part of the
county, from this day forward, upon the amount of
taxes covered by this payment.

It is stipulated that an order of court enforcing

this stipulation may be entered, upon application of either party hereto.

Dated this 4th day of November, 1914.

PETERS & POWELL,
EARLE & STEINERT,
Attorneys for Plaintiffs.

J. E. COCHRAN,
J. E. FROST,
CHARLES F. RIDDELL,
EDWIN C. EWING,
Attorneys for Defendants.

Indorsed: Stipulation. Filed November 6, 1914.

No. 37
ORDER

This matter coming on to be heard upon the stipulation of the parties plaintiff and defendants herein filed on the 5th day of November, 1914, with respect to the payment to and acceptance by the Defendants of the moneys paid into this court by Complainants, and the same being submitted to this Court, and being considered to the best interests of all parties that said payment be allowed and said county be permitted to accept same, upon the conditions set forth in the stipulation;

It is hereby ordered that the Clerk of this Court pay out said moneys to the defendant Treasurer of Clallam County in furtherance of said Stipulation; the scope and effect of same and the rights of the parties to be as defined in said stipulation.

Done in open Court this 6th day of Nov., 1914.

JEREMIAH NETERER, Judge.

Indorsed: Order. Filed November 6, 1914.

No. 1878
Office of County Treasurer,
Clallam County, Washington.
Port Angeles, Wash., Nov. 7/14.

Received of Frank L. Crosby, Clerk Fd. Ct. \$9,-
065.00, Nine thousand sixty-five 00/100 dollars, ad-

vance tax for Charles H. Ruddock, et al.

C. L. BABCOCK,

Treasurer of Clallam County.

By D. J. Kelly, Deputy.

Indorsed: Filed November 9, 1914.

IN THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE NINTH CIRCUIT

CHARLES H. RUDDOCK and
TIMOTHY H. McCARTY,

Appellants,

vs.

CLALLAM COUNTY and
CLIFFORD L. BABCOCK, treasurer,

Appellees.

No. 37

ORDER UPON STIPULATION AS TO RECORD
OF TESTIMONY ON APPEAL

It appearing from the stipulation of appellants and appellees, by their respective counsel, herein filed, that, in the District court of the United States for the Western District of Washington, Northern Division, there were therein pending, heard and determined four causes, being designated as follows: Clallam Lumber Company, a corporation, plaintiff v. Clallam County, a municipal corporation, and Clifford L. Babcock, treasurer, being Equity cause No. 36, and the cause of Clallam Lumber Company, plaintiff, v. Clallam County and Herbert H. Wood, treasurer, being Equity cause No. 56; and the cause of Charles H. Ruddock and Timothy H. McCarty, plaintiffs, v. Clallam County, a municipal corporation, and Clifford L. Babcock, treasurer, being Equity cause No. 37; and the cause wherein Charles H. Ruddock and Timothy H. McCarty, are plaintiffs and Clallam County, a municipal corporation, and Herbert H. Wood, treasurer, are defendants, being Equity cause No. 57; that said four causes were consolidated for trial and were heard, tried and determined by one and the same judge upon the same testimony, evidence and exhibits, and that there was no other or different evidence in the one case than in the other; and it ap-

pearing that there was but one and the same decision of the trial judge handed down in the four cases, and that the plaintiffs in the above four cases are seeking to appeal from the judgment or decree rendered and entered in each of said cases to this honorable court; and it appearing that the transcript of the testimony and evidence in these cases is quite voluminous, covering some 700 pages of printed matter, and that the trial court's memorandum of opinion is quite lengthy; now, in order to save unnecessary expense upon appeal, it is here

ORDERED that all four of these cases may be presented, heard and determined on appeal, in so far as the evidence, testimony, depositions and exhibits are concerned, upon the record of such to be transcribed, printed and sent up in the case of Clallam Lumber Company, a corporation, plaintiff, against Clallam County, a municipal corporation, and Clifford L. Babcock, treasurer, defendants, being Equity cause No. 36 in the trial court, and that the record of the evidence, testimony, depositions and exhibits and the trial court's memorandum decision, need not be transcribed, printed or served or sent up to the Circuit Court of Appeals in the other three cases, but may be considered as incorporated in the record on appeal in each of said causes from the record in Equity cause No. 36 above named.

Dated at Portland, Oregon, this 12th day of December, 1916.

WM. B. GILBERT,
Judge of the United States Circuit Court of Appeals
for the Ninth Circuit.

We hereby consent to the rendering and entry of the above order.

J. E. FROST,
C. F. RIDDELL,
EDWIN C. EWING,
Counsel for Appellees.

EARL & STEINERT,
PETERS & POWELL,
Attorneys for Appellees.

Endorsed. Filed in U. S. District Court, Dec. 13, 1916.

DECREE—NO. 37

The above entitled cause having come on duly and regularly for trial before the undersigned Judge of the United States District Court, the plaintiffs appearing by their attorneys, F. W. Keeney, Esquire, Messrs. Earle & Steinert and Messrs. Peters & Powell, and the defendants appearing by Mr. Sandford C. Rose, Prosecuting Attorney for Clallam County, and by their attorneys, J. E. Frost, Edwin C. Ewing and C. F. Riddell, and there being at issue and ready for trial three other causes now on file in this court, involving substantially the same issues and requiring substantially the same testimony, and counsel for all parties hereto, with the consent of the court, having stipulated that all the testimony introduced insofar as applicable should be considered upon the one trial as having been introduced in each of said causes, the said causes being this cause and cause number 57 in this court, between the same parties, and causes numbered 36 and 56 in this court in which Clallam Lumber Company, a corporation, is plaintiff, and Clallam County and its Treasurer in his official capacity as such officer, are defendants; and all parties having introduced testimony and rested, and respective counsel having orally argued this cause to the court, and having submitted their briefs to the court, and the court having considered the same; and it appearing to the court that by written stipulation between the parties filed in this court on the 6th day of November, 1914, and order then entered, there was on said 6th day of November, 1914, paid by the clerk of this court to the defendant Clallam County, the sum of \$9,065., the same being the proceeds of the tender theretofore paid into this court by these plaintiffs, and the court, after full consideration of all the facts and the law, being now duly and fully advised in these premises,

It is hereby ORDERED, ADJUDGED AND DECREED that the above entitled cause be and the same

hereby is dismissed with prejudice, and that plaintiffs take nothing by this cause.

It is further ORDERED, ADJUDGED AND DECREED that all the taxes levied for the year 1913 upon the real property described in the complaint herein, are in all things legal and valid and (except for the payment hereinafter in this decree mentioned) are due and owing to Clallam County, a municipal corporation of the State of Washington.

It is further ORDERED, ADJUDGED AND DECREED that the payment of said sum of \$9,065. do operate as a payment pro tanto of the taxes for the year 1913 due upon the real property described in the complaint herein, and that the tax for said year 1913 so due upon each description of property appearing upon the tax rolls and set forth in said complaint, be determined by the County Treasurer of said Clallam County in the following manner, to-wit: That said Treasurer determine the total amount of tax due for the year 1913 upon all of said real property described in the complaint herein; that he credit on the said taxes due upon each such description on the tax rolls a sum which bears the same ratio to the total amount due on such description of real property as \$9,065. bears to the total amount of tax due upon all of said property for the year 1913; that the amount left after making said deduction be considered and hereby is decreed to be the principal amount of such taxes still due upon such description; that the said Treasurer figure interest according to law relating to delinquent taxes, upon the total amount due on each said description on the tax rolls up to the 6th day of November, 1914, and that he figure interest according to law relating to delinquent taxes, upon the balance due after allowing the credit aforesaid from the 6th day of November, 1914, until paid; and the said balance due, together with the interest figures as aforesaid, and all other lawful costs and charges accruing, shall be the amount necessary to be paid to redeem the said property from the lien of the said taxes.

It is further hereby ORDERED, ADJUDGED

AND DECREED that the above named defendant Clallam County, a municipal corporation of the State of Washington, do have and recover of and against the above named plaintiffs, Charles H. Ruddock and Timothy H. McCarthy, and each of them, a joint and several judgment for its taxable costs and disbursements herein, which are hereby taxed in the sum of Twenty-three Dollars and Ninety Cents (\$23.90), for which said sum let execution issue.

To the dismissal of this cause, and to each separate paragraph of this decree and to the signing and entry of this decree, the above named plaintiffs except and their exception is hereby allowed by the court.

Done in open court this 3d day of Feb., A. D. 1916.

EDWARD E. CUSHMAN,

District Judge.

Indorsed: Decree. Filed February 3, 1916.

No. 37

EXCEPTIONS TO AMENDED ANSWER OF DEFENDANTS

The defendants upon the conclusion of the evidence in this cause on the 10th day of December, 1915, obtained permission from the court to amend their answer herein so as to conform to the proofs, which permission was then granted over the objection of the plaintiffs, to which the plaintiffs excepted and said exception was then allowed.

The application of the defendants now made to file herein a formal second amended answer embodying these proposed amendments, is now allowed over the objection of the complainants to which exception is reserved by the complainants and said exception is here and now allowed.

Referring to paragraph IX of said amended pleading complainants except to the amendment which now reads:

“* * * Defendants admit the practice by assessors and taxing boards of the custom therein referred to, and admit the pursuit of such custom by

county assessors and its recognition and acquiescence by the State Board of Equalization."

whereas in their former answer, they had specifically denied these matters.

And referring to line II of said paragraph IX, the defendants now omit the following allegation, which appeared in the former answer:

"Or upon any other or different basis than that provided by the laws of the State of Washington at the time the assessments for the years 1912 and 1913 were made."

And referring to line 15 of said paragraph IX the defendants' amended answer now reads:

"* * * deny that the interior timber lands in said county, including the lands owned by the plaintiffs, were and are valued in the year 1913 for the purpose of taxation at sums in excess of fifty-three per cent of the true and fair value thereof in money."

whereas they previously admitted such matter. And immediately prior to such admission was the following allegation:

"Or upon any other or different basis than that provided by the laws of the State of Washington at the time the assessments for the years 1912 and 1913 were made."

which last allegation is now omitted from the amended answer.

II

Referring to paragraph X of said amended answer, complainants except to the amendment which now reads:

"Deny that said assessment for the year 1913 was made upon the basis of 87 per cent."

omitting from this amendment, what they had formerly pleaded, as follows:

"Or upon any other or different basis than the true and fair value in money of the property assessed."

III

And referring to paragraph XII of said amended answer, complainants except to the amendment which now reads, at line 3, page 7:

“Deny that it has been the custom of the assessor of said county to consult and advise with the other members of the County Board of Equalization of said County, etc.”

whereas in their former pleading, they admitted such allegation.

IV

And referring to paragraph XVII of said amended answer, at page 10, line 16 thereof, the defendants now allege:

“But deny that the same can readily be logged to the Straits as stated.”

whereas in their former pleading they admitted this allegation.

Complainants' objection is based upon the ground that such amendments are not consistent with the proofs, and are wholly inconsistent with the pleadings upon which the case was tried, and with the position taken by the defendants throughout the trial.

Complainants' exceptions to each of the amendments to the answer in each of the above particulars, are hereby allowed, such exceptions to be entered as of date February 3, 1916.

EDWARD E. CUSHMAN, Judge.

Indorsed: Exceptions to Second Amended Answer of Defts. Filed February 24, 1916.

No. 37

PETITION TO REHEAR AND TO MODIFY JUDGMENT

Come now the plaintiffs, Charles H. Ruddock and Timothy McCarthy, and respectfully pray this court to grant a rehearing herein, in this:

I

The court erred in sustaining the assessment by Clallam County of the hemlock timber and hemlock ties of the plaintiffs in any sum whatsoever, for the reason that it appeared from the evidence in the entire record that this timber and these ties were of no appreciable market value at the dates of the assessment, nor at any time covered by the facts of this

case. The court therefore should have struck such assessment of the plaintiff out, whether the plaintiff had made a case of fraud upon the entire issue or not, since a court of equity having acquired jurisdiction, on the grounds of fraud, would retain it to do equity to the plaintiff, even if the plaintiff failed in sustaining charges of fraud.

Simkins A Federal Equity Suit, p. 27.

Griswold vs. Hilton, 87 Fed. 257.

Waite vs. O'Neill, 34 L. R. A. 550, 76 Fed. 408.

Shainwald vs. Lewis, 69 Fed. 492.

II

The plaintiffs respectfully pray the court to modify the judgment and decree by charging the plaintiffs or the plaintiffs' lands with interest at six per cent per annum from the date of delinquency of taxes, instead of the statutory rate, in view of the plaintiffs' good faith in bringing this suit and in the prosecution of the same, and on the ground of its being an unnecessary hardship to penalize the plaintiff with so high a rate of interest under the circumstances.

Respectfully submitted,

PETERS & POWELL,

EARLE & STEINERT,

Attorneys for Plaintiffs.

United States of America,
State of Washington,
County of King.

ss.

Dan Earle being first duly sworn, on oath says: That he is one of the attorneys for the plaintiffs in the above entitled cause and makes this verification on their behalf for the reason that said plaintiffs are without the Western District of Washington; that he has read the foregoing Petition for Rehearing and to Modify Judgment, knows the contents thereof and believes the same to be true.

DAN EARLE.

Subscribed and sworn to before me this 3rd day of March, 1916.

(Seal)

ROBERT W. REID,

Notary Public in and for the State of Washington, residing at Seattle.

Indorsed: Petition to Rehear and to Modify Judgment. Filed March 3, 1916.

No. 37

HEARING—JOURNAL ENTRY

Now on this day this cause comes on for hearing on motion for rehearing or review, the Plaintiff being represented by Peters & Powell and D. Earle, and the Defendants represented by C. F. Riddell, and the Court after hearing argument of respective counsel takes the said matter under advisement.

Dated April 18, 1916.

Equity Journal 1—Page 125.

No. 37

MEMORANDUM DECISION ON PETITION FOR
A RE-HEARING
FILED MAY 11, 1916.

Peters & Powell,
Earle & Steinert,
Jones & Riddell,
J. E. Frost,
E. C. Ewing,
CUSHMAN, District Judge.

For Defendants.

For Plaintiffs.

Insofar as the petition for a re-hearing is aimed at the assessment as affected by the hemlock valuation, all that can be said is that certain phases of the evidence—particularly that of some of defendants' witnesses—are more favorable to plaintiffs as to the overvaluation of the hemlock than that covering the valuation of the fir, spruce and cedar; but, after all is said, it is only a question of overvaluation and, in any event, it is not so palpably excessive as to warrant a finding of fraud.

The cases relied upon by the plaintiffs are not cases of overvaluation, but uniformly involve some other controlling element as: fraud; the adoption of a fundamentally wrong principle; an erroneous system; mistake of law or such palpably excessive overvaluation as to impute fraud.

As to the question of interest on the unpaid and untendered taxes, the laws of Washington provide:

“Hereafter no action or proceeding shall be commenced or instituted in any court of this state to enjoin * * * the collection of any taxes * * *, unless the person or corporation desiring to commence or institute such action or proceeding shall first pay, or cause to be paid, or shall tender to the officer entitled under the law to receive the same, all taxes, penalties, interest, and costs justly due and unpaid from such person or corporation on the property * * *”. (Sec. 955 Rem. & Bal. Code.)

“The county treasurer shall be the receiver and collector of all taxes extended upon the tax-books of the county, whether levied for state, county, school, bridge, road, municipal or other purposes, and also of all fines, forfeitures or penalties received by any person or officer for the use of his county. All taxes upon real property made payable by the provisions of this act shall be due and payable to the treasurer as aforesaid on or before the thirty-first day of May in each year, after which date they shall become delinquent, and interest at the rate of fifteen per cent per annum shall be charged upon such unpaid taxes from the date of delinquency until paid.” (Sec. 9219 Rem & Bal. Code.)

It may be conceded that this suit was brought in entire good faith; that plaintiffs' only remedy was in equity and not at law and that the fifteen per cent. interest charged upon the taxes is a penalty, yet I find no warrant therein given the court to set aside a statute passed to safeguard the sources of the state's revenues.

Re-hearing denied.

Indorsed: Memorandum Decision on Petition for a Rehearing. Filed May 11, 1916.

No. 37

ORDER DENYING PETITION FOR REHEARING

A petition for rehearing having been filed by the plaintiffs in the above entitled cause, briefs having been submitted thereon, and the court having considered

the same; and the court having on the 11th day of May, 1916, filed its memorandum decision herein on said petition for rehearing;

Now, therefore, it is hereby ordered that said petition for rehearing be and the same hereby is denied. To the denial of said petition and to the entry of this order plaintiffs except and exception is hereby allowed.

Done in open Court this 15th day of May, 1916.

EDWARD E. CUSHMAN,
United States District Judge.

Indorsed: Order Denying Petition for Rehearing.
Filed May 15, 1916.
Tuesday, May 2, 1916.

Court met pursuant to adjournment. Present: Hon. Jeremiah Neterer, Judge; F. L. Crosby, Clerk; Albert Moody, Assistant U. S. Attorney; Crier Kelly, Bailiff; Yeaton; W. E. Theodore, Deputy U. S. Marshall.

Whereupon court stands adjourned sine die.

JEREMIAH NETERER, District Judge.

No. 37

ASSIGNMENTS OF ERROR ON APPEAL

Now on this 27th day of October, 1916, came the plaintiffs Charles H. Ruddock and Timothy H. McCarthy, by its solicitors, Earle & Steinert and Peters & Powell, and say that the Decree entered in the above entitled cause on the 3rd day of February, 1916, is erroneous and unjust to the plaintiffs, for the following reasons:

I

Because the court overruled the objection of the plaintiffs to the following question asked by the defendants' counsel on cross examination of the witness, Thomas Aldwell, a witness for the plaintiff on the value of the Olympic Power Company's plant:

"Do you know what the general impression in Port Angeles and other places was concerning your dam at that time?"

To this plaintiff objected. The objection was overruled and the witness answered (Plaintiff reserving and being allowed an exception):

"I think around Port Angeles they were very optimistic."

"Q (By defendants' counsel) In other words the general impression was that your dam and power site was a failure up there?"

To this plaintiffs objected as being incompetent, irrelevant and immaterial. The objection was overruled, an exception taken and allowed by the court.

To which question the witness answered substantially that the general impression was that the dam would not hold.

II

Because the court overruled the objection of the plaintiffs to the following question asked by the defendants' counsel on cross examination of the witness Aldwell, a witness for the plaintiffs as to the value of town lots in Port Angeles in March of 1913 and 1914:

The witness was asked whether he was not willing to sell some fifty or sixty thousand dollars worth of Port Angeles property that he had, for double its assessed value, to which the plaintiffs objected as incompetent. The objection was overruled and an exception allowed. The witness answered that he would sell the property at double its assessed value.

This holding of the court was error.

III

Because the court erred in admitting the testimony of the defendants' witness, C. M. Lauridsen under the following circumstances:

The witness Lauridsen was called by the defendants as an expert upon the value of real estate in Port Angeles and was asked to point out upon a memorandum or tabulation of certain lots what ones he said he would sell on the first of March, 1914, for their assessed value. This was objected to by plaintiffs on the ground that it was incompetent, irrelevant and not evidence of the market value of the property. This objection was overruled by the court, an exception taken

by plaintiffs and allowed by the court.

The witness answered that the property described was upon the last two sheets of this memorandum or tabulation of lots, being Defendants' Exhibit 29.

II

Because the court overruled the objection of the plaintiffs to the following question put by defendants' counsel to their own witness, C. M. Lauridsen, who was being examined as an expert upon the value of real property in the town of Port Angeles:

"Q. That property, according to Mr. Ware's testimony was worth \$6000. on the first of March, 1914. Will you state what you paid for it?"

A I paid \$2500 on the 13th of March of that same year."

To which ruling the plaintiffs excepted and their exception was allowed by the court.

III

Because the court overruled the objection of the plaintiffs to the following question put by the defendants to their witness, C. M. Lauridsen:

"Q State the facts about the purchase of Lots 18 in Block 54 and Lots 7 and 14 in Block 172."

To which the witness answered:

"Lot 18 in Block 54 I bought in January for \$300." Lot 7 and lot 14 in Block 172, the witness says he purchased for \$175.

To which ruling the plaintiffs excepted and their exception was allowed by the court.

IV

Because the court erred in sustaining the objection of the defendants to the following question put by the plaintiff to one of the defendants, Clifford L. Babcock:

"Q Again in section 18 of your answer you say 'Deny that the lands and other properties situated at Port Angeles and subject to taxation and valuation upon the assessment rolls as equalized for such years, were valued at not to exceed 10 to 20 per cent of their true and fair value in money.' Could you state then what you had in mind at that time as the rate at which they were assessed?"

To which ruling the plaintiffs excepted and their exception was allowed by the court.

V.

Because the court, after the conclusion of all the evidence, permitted the defendants to amend their amended answer in the following particulars, to wit:

(a) In paragraph IX of their first amended answer the defendants had denied the existence of the practice amongst assessors of the various counties and particularly Clallam County, of assessing property at from 35 to 50 per cent of its true value, and had denied the recognition of such custom or practice by the State Board of Equalization.

In said second amended answer they "admit the practice by assessors and taxing boards of the custom therein referred to and admit the pursuit of such custom by county assessors and its recognition and acquiescence by the state Board of Equalization" meaning thereby the custom of county assessors of assessing property at from 35 to 50 per cent of its true value.

(b) In their former answer paragraph IX thereof, they had "denied that the Assessor of Clallam County gives out and pretends that for the year 1913 he assessed taxable property within Clallam County upon the basis of 53 per cent of its true and fair value in money, or *upon any other or different basis than that provided by the laws of the state of Washington at the time the assessment of the years 1912 and 1913 were made.*" In their second amended answer, paragraph IX thereof, they omit all of that portion above in italics.

(c) In their first amended answer, paragraph IX, the defendants had plead as follows:

"Admit that the interior timber lands in said county, including the lands owned by the plaintiffs, were and are valued in the year 1913 for purposes of taxation, at sums in excess of 53 per cent of the true and fair value thereof in money."

In their second amended answer, paragraph XIII, they deny this allegation.

To this amendment plaintiffs objected at the time,

but said objection was overruled and an exception allowed by the court.

VI

Because the court allowed the defendants, over the objection of the plaintiffs then made at the conclusion of the evidence, to amend their answer in the following particulars:

(a) In their first amended answer defendants had alleged in paragraph X thereof the following: "Deny that said assessment for the year 1913 was made upon the basis of 102 per cent, or *upon any other or different basis than the true and fair value in money of all property assessed.*"

Whereas the second amended answer contains the same denial, omitting however the words above in italics.

Plaintiffs reserved an exception to this amendment at the time, which was allowed by the court.

(b) In their first amended answer, in paragraph XVII thereof the defendants had alleged: "That in the zones abutting upon the Straits of Fuca there lie fine bodies of fir, spruce, cedar, and hemlock timber which can readily be logged to the Straits as stated," while in their second amended answer they *deny* that said timber can readily be logged to the Straits as stated.

To this amendment and to the allowance thereof the plaintiffs at the time reserved an exception, which was allowed by the court.

VII

Because the court erred in decreeing that the taxes for the year 1914 upon the real property of the plaintiffs described in the complaint, being to wit in the sum of \$15,809. (or in any sum in excess of \$9250) were legal and valid.

VIII

The court erred in adjudging and decreeing the bill of the plaintiffs dismissed and a judgment against plaintiffs for costs.

IX

Because the court erred in failing to adjudge and

decree that the just and equitable amount to be taxed to the plaintiffs' lands set forth in their bill, was not in excess of \$9250.00, and that plaintiffs had tendered this amount, and that the County of Clallam and the Treasurer thereof should be required to accept this amount in full payment for the taxes upon the property described in the bill of complaint, levied for the year 1913 and that the balance of the taxes levied upon said lands should be cancelled and the defendants enjoined from selling said lands for said taxes.

X

Because the court erred in its decree in failing to find and decree that the taxes assessed and levied for the year 1913 against the lands of the plaintiffs, in the sum of \$15809. were grossly in excess of the true and just assessment against said lands for said year, and was the result of fraud and conspiracy on the part of the assessor and board of equalization of Clallam County.

XI

Because the court erred in refusing to re-adjust and fix said assessment at a fair and just amount and permit the plaintiffs to pay said amount with the credit of \$9250. tendered by the plaintiffs, and to cancel from said lands the balance of said taxes.

XII

Because the court erred, under the evidence, in failing to eliminate the assessments on hemlock timber, ties and poles, and in failing to cut down the amount of the tax levy, as provided in the decree by at least the sum of \$1007.⁴¹.

XIII

Because the evidence showed that the allegations of the amended complaint were true and that the allegations of the second amended answer were not true.

XIV

Because the court erred in entering judgment that the plaintiffs take nothing by this action and that the defendants go hence without day and recover their costs.

XV

Because the court erred in not entering judgment for the plaintiffs and against the defendants in accordance with the prayer of the amended complaint.

XVI

Because the evidence showed that the plaintiffs' lands set out in the bill of complaint, were assessed by Clallam County for the year 1913 taxes, in the sum of \$15809, whereas a just and fair assessment of such lands did not exceed the sum of \$9250. and that this over-assessment was the result of fraudulent conspiracy and discrimination on the part of the assessing and taxing authorities of Clallam County as against the plaintiffs and other timber lands, and in favor of all other classes of property in said Clallam County and that said fraudulent conspiracy had been carried on and persisted in by said officers for a number of years prior to the time of such assessment.

WHEREFORE plaintiffs pray that such judgment be reversed and that this Honorable Court will direct the entry of a judgment or decree in accordance with the prayer of plaintiffs' complaint.

EARL & STEINERT,
PETERS & POWELL,

Attorneys for Plaintiffs.

Indorsed: Assignments of Error on Appeal. Filed October 27, 1916.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE WESTERN DISTRICT
OF WASHINGTON, NORTHERN DI-
VISION

IN EQUITY—No. 37

CHARLES H. RUDDOCK and
TIMOTHY H. McCARTHY,

Plaintiffs,

vs.

CLALLAM COUNTY, a municipal corporation,
and CLIFFORD L. BABCOCK, Treasurer,
Defendants.

PETITION FOR APPEAL

Filed Oct. 27, 1916, in the District Court of the United States for the Western District of Washington.

TO THE HONORABLE EDWARD E. CUSHMAN,
DISTRICT JUDGE:

The above named plaintiffs, feeling themselves aggrieved by the decree made and entered in this cause, on the 3rd day of February, 1916, and, after motion for re-hearing, upon the 16th day of May, 1916, do hereby appeal from said decree to the Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the Assignments of Errors, which is filed herewith, and pray that their appeal be allowed and that citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which said decree was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, and your petitioners further pray that the proper order touching the security to be required of them to perfect their appeal may be made.

EARL & STEINERT,
PETERS & POWELL,

Solicitors.

The petition granted and the appeal allowed upon giving bond conditioned as required by law in the sum of Five hundred Dollars.

E. E. CUSHMAN, Judge.

Dated at Seattle, Oct. 27, 1916.

Indorsed: Petition for Appeal. Filed October 27, 1916.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

CHARLES H. RUDDOCK and
TIMOTHY H. McCARTHY,

Plaintiffs,

CLALLAM COUNTY, a municipal corporation,
and CLIFFORD L. BABCOCK, Treasurer,

Defendants.

IN EQUITY—No. 37
BOND ON APPEAL

KNOW ALL MEN BY THESE PRESENTS:

That we, Charles H. Ruddock and Timothy H. McCarthy, as principals, and Massachusetts Bonding and Insurance Company, as surety, acknowledge ourselves to be jointly indebted to the county of Clallam and Clifford L. Babcock, Treasurer, appellees, in the above entitled cause, in the sum of Five hundred (\$500.00) Dollars, conditioned that,

Whereas, on the 3rd day of February, 1916, and after petition for re-hearing thereon, on the 16th day of May, 1916, in the District court of the United States for the Western district of Washington, in a suit depending in that court, wherein Charles H. Ruddock and Timothy H. McCarthy were plaintiffs and Clallam county and Clifford L. Babcock were defendants, numbered on the Equity docket as thirty-seven, a decree was rendered against the said Charles H. Ruddock and Timothy H. McCarthy, and the said Charles H. Ruddock and Timothy H. McCarthy, having obtained an appeal to the Circuit Court of Appeals of the United States for the Ninth Circuit, and filed a copy thereof in the office of the clerk of court, to reverse the said decree, and citation directed to the said county of Clallam, and to the said Clifford L. Babcock, treasurer, citing and admonishing them to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden in the city of San Francisco, in the State of California, on the 26th day of November, 1916, next.

Now, if the said Charles H. Ruddock and Timothy H. McCarthy shall prosecute their appeal to effect and shall answer all costs, if they fail to make their appeal good, then the obligation to be void, else to remain in full force and virtue.

CHARLES H. RUDDOCK,

By W. A. Peters, his Attorney.

TIMOTHY H. MCCARTHY,

By W. A. Peters, his Attorney.

be transcribed or printed herein, and the court upon hearing said motion and being fully advised in the premises, and considering that good cause has been shown for granting the same, and being the Judge who signed the Citation on appeal herein;

IT IS ORDERED That the time within which said appellants shall docket said cause on appeal and the return day named in the Citation issued by this court, be enlarged to and including the 1st day of January, 1917.

EDWARD E. CUSHMAN, Judge.

Service of the foregoing Order and receipt of a copy thereof admitted this 2d day of November, 1916.

S. C. ROSE,

C. F. RIDDELL,

Attorneys for Defendants, Appellees.

Indorsed: Order Extending Time to Docket Cause on Appeal. Filed November 2, 1916.

No. 37

PRAECIPE

TO THE CLERK OF THE ABOVE ENTITLED COURT:

You will please prepare a record on appeal in the above entitled cause, consisting of the following:

(1) Caption exhibiting the proper style of court and title of the case; names of the parties; the several dates when the respective pleadings were filed; the time when the trial was had; the name of the judge hearing same; dates of entry of the decree; of plaintiffs' petition for rehearing; of argument on petition to rehear and of the court's taking same under advisement; of the entry of final order denying petition to rehear; of filing petition for appeal; of allowance of petition by the court and the filing of assignment of errors.

(2) Plaintiffs' complaint, filed May 29, 1914.

(3) Defendants' motion to dismiss plaintiffs' bill of complaint, filed June 18, 1914.

(4) Memo decision denying motion to dismiss, filed October 26, 1914.

(5) Order denying motion to dismiss filed Oct. 30, 1914.

(6) Stipulation of parties with reference to payment of tender and acceptance of same, filed Nov. 6, 1914.

(7) Order upon Clerk to pay amount tendered to County Treasurer, filed November 6, 1914.

(8) Receipt of County Treasurer filed Nov. 8, 1914.

(9) Stipulation of parties with reference to Complaint and Amended Complaint, Amended Answer and Second Amended Answer, filed October, 1916.

(10) Defendants' amended answer to amended complaint filed January 18, 1915.

(11) Statement of testimony as approved by the court and filed in said cause.

(12) The following depositions taken and filed in this cause on the day of 1915 to wit: Testimony of R. W. Schumacher and J. P. Christenson. Testimony of J. A. Adams.

The following portions of the testimony of William Garlick: Page 27, lines 6 to 22 inclusive; page 50, line 25 to line 2 on page 51; page 52 lines 3 to 18 inclusive; page 57 lines 21 to 30 inclusive; all cross examination, re-direct examination and re-cross examination of the witness Garlick.

Testimony of Charles F. Seal, page 66 lines 6 to 13 both inclusive.

(13) The following exhibits in the case:

Plaintiff's Exhibit P being a letter from Christensen to Grasty dated April 29, 1914.

Plaintiffs' Exhibit L, being letter of J. C. Hansen to Grasty.

Plaintiffs' Exhibit M, letter of Clifford L. Babcock to Grasty.

Plaintiffs' Exhibit N, letter from Lewis Levy to Grasty.

Plaintiffs' Exhibit F, letter from Thomas Aldwell to Grasty dated April 29, 1914.

Plaintiffs' Exhibit E, photographed list of appraisal of properties by Thomas Aldwell.

Plaintiffs' Exhibit FF, Statement showing assessment of shingle mills in Clallam County.

Plaintiffs' Exhibit T. Assessment of Olympic Power Company's property.

Plaintiffs' Exhibit CC, Written statement from Henry to Grasty.

(14) Statement as to assessment of banks, filed December 11, 1915, filed in Cause No. 36.

(15) Memo decision filed January 22, 1916.

(16) Decree rendered and entered February 3, 1916.

(17) Plaintiffs' exceptions to allowance of amendment of defendants' answer and order allowing amendments, filed February 3, 1916.

(18) Plaintiffs' petition to rehear and modify judgment, filed March 3, 1916.

(19) Journal entry showing hearing on petition to rehear entered April 18, 1916.

(20) Memo decision upon petition to rehear filed May 11, 1916.

(21) Order denying petition to rehear filed May 15, 1916.

(22) Plaintiffs' notice to defendants of the lodgment of statement of facts, filed September 1, 1916.

(23) Plaintiffs' assignment of errors, filed October 27, 1916.

(24) Plaintiffs' petition for appeal and order allowing same.

(24½) Bond on appeal and approval thereof.

(25) Citation on appeal and admission of service thereof by the defendants.

(26) Order of court to send up original exhibits.

(All the above, 24, 25 and 26, filed Oct. 27, 1916.)

(27) Journal entry showing adjournment of term of District Court immediately preceding the term commencing the first Tuesday in May, 1916.

(28) Order of court upon stipulation of the parties with respect to settlement of the Statement of Facts, filed October 27, 1916.

(29) This Praecept with acknowledgment of service thereon by defendants.

(30) Index to all of the above.

Dated at Seattle, Washington, this 30th day of October, 1916.

EARLE & STEINERT,
PETERS & POWELL,

Attorneys for Plaintiffs, Appellants.

Copy of the foregoing Praecipe received this 31st day of Oct., 1916.

SANFORD C. ROSE.
DEVILLO LEWIS.
J. E. FROST.
E. C. EWING.
JONES & RIDDELL,

Attorneys for Defendants, Appellees.

Indorsed: Praecipe for Transcript on Appeal.
Filed October 31, 1916.

No. 37

DEFENDANTS' PRAECIPE FOR ADDITIONAL
RECORD
TO THE CLERK OF THE ABOVE ENTITLED
COURT:

You will please prepare the following additional portions of the record in the above entitled cause, and incorporate the same into the transcript of the record on appeal in the above entitled cause, to wit:

1. Defendants' answer to the amended bill of complaint filed in this court on the 20th day of November, 1914.

2. Plaintiffs' motion against the said answer, said motion being entitled "Motion to Strike" and filed in this court on the 30th day of November, 1914.

3. Order allowing plaintiffs' motion to make more definite and certain, which was dated the 21st day of December, 1914.

SANFORD C. ROSE,
Prosecuting Attorney.

DEVILLO LEWIS,
Deputy Prosecuting Attorney.

J. E. FROST.

E. C. EWING.

JONES & RIDDELL,

Attorneys for Defendants.

Indorsed: Defendants' Praeipce for Additional Record. Filed November 8, 1916.

No. 37

STIPULATION AND ORDER AS TO RECORD

It is hereby stipulated by and between the parties plaintiff and defendant through their respective counsel, that in preparing the transcript and record on appeal all captions, except the name of the paper and number of the cause, except where specially noted in the Praeipce for record on appeal, and all verifications, all certificates of notaries public or other officers or officials to all depositions taken and also the stipulation with reference to taking the depositions, may be omitted, and that all indorsements except to show the name of the paper and date of filing, and all acceptances of service of papers, may be omitted.

PETERS & POWELL,

Attorneys for Plaintiff.

S. C. ROSE,

C. F. RIDDELL,

Attorneys for Defendants.

On reading the foregoing Stipulation as to the record on appeal in this cause it is ordered that said record may be so prepared and filed.

Dated at Seattle, Washington, this 2d day of November, 1916.

EDWARD E. CUSHMAN,

Judge of the above entitled Court.

Indorsed. Stipulation and Order as to Record. Filed November 2, 1916.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION

No. 37

CHARLES H. RUDDOCK and

TIMOTHY H. McCARTHY,
 Plaintiffs, Appellants,
 vs.
 CLALLAM COUNTY, a municipal corporation and Clifford L. Babcock, Treasurer,
 Defendants, Appellees.
 UNITED STATES OF AMERICA
 to
 CLALLAM COUNTY, a municipal corporation
 and Clifford H. Babcock, Treasurer
 CITATION
 A GREETING:

You and each of you are hereby notified that in a certain suit in the United States District Court for the Western District of Washington, Northern Division, wherein Charles H. Ruddock and Timothy H. McCarthy are plaintiffs, and Clallam County and Clifford L. Babcock, Treasurer, are defendants, an appeal has been allowed the plaintiffs therein to the United States Circuit Court of Appeals for the Ninth Circuit.

You are hereby cited and admonished to be and appear in said United States Circuit Court of Appeals for the Ninth Circuit at the city of San Francisco, state of California, thirty days after the date of this citation, to show cause, if any there be, why the order and decree appealed from should not be corrected and speedy justice done to the parties in that behalf.

Witness the Honorable E. E. Cushman, Judge of the United States District Court for the Western District of Washington, sitting in the Northern Division, this 27th day of October, 1916.

EDWARD E. CUSHMAN.

United States District Judge for the Western District of Washington, sitting in the Northern Division.

Received a copy of the above and foregoing Citation this 27th day of Oct., 1916.

SANFORD C. ROSE.
 DEVILLO LEWIS.
 J. E. FROST.
 E. C. EWING.

JONES & RIDDELL.

Attorneys for above named appellees.

Indorsed: No. 37. In the District Court of the United States Western District of Washington, Northern Division. Charles H. Ruddock and Timothy H. McCarthy, Plaintiffs. Vs. Clallam County, et al., Defendants. Citation. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Oct. 27, 1916. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. Peters & Powell. Earle & Steinert. Attorneys for Plaintiffs. Rooms 546-551 New York Building, Seattle, Washington.

No. 37

CLERK'S CERTIFICATE TO TRANSCRIPT OF
RECORD
UNITED STATES OF AMERICA,
WESTERN DISTRICT OF
WASHINGTON—ss.

I, Frank L. Crosby, Clerk of the United States District Court, for the Western District of Washington, do hereby certify the foregoing 90 printed pages numbered from 1 to 90, inclusive, to be a full, true, correct and complete copy of so much of the record, papers, and other proceedings in the above and foregoing entitled cause, as are necessary to the hearing of said cause in the United States Circuit Court of Appeals for the Ninth Circuit, and as is stipulated for by counsel of record herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitute the record herein from the judgment of said United States District Court for the Western District of Washington, to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the Complainants for making record, certificate or return to the United State Circuit Court of Appeals for the Ninth Circuit in the above entitled cause, to wit:

Clerk's fee (Sec. 828 R. S. U. S.) for making
record, certificate or return, 324 folios at 15c....\$ 48.60

Certificate of Clerk to transcript of record—4 folios at 15c60
Seal to said Certificate.....	.20
Statement of cost of printing said transcript of record, collected and paid.....	93.10
TOTAL	\$142.50

I hereby certify that the above cost for preparing, certifying and printing record amounts to \$142.50, and has been paid to me by counsel for Complainants.

I further certify that I hereto attach and herewith transmit the original Citation issued in this cause and under separate cover the stipulation and order to hear this cause on the Printed Record of Evidence in Cause No. 36 Equity on Appeal herewith.

IN WITNESS WHEREOF I have hereto set my hand and affixed the seal of said District Court at Seattle, in said District, this 21st day of December, 1916.

(SEAL)

FRANK L. CROSBY,
Clerk U. S. District Court.